

1037
No. 2839

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN TWO VOLUMES.)

W. H. WOOLDRIDGE,
Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA,
Defendant in Error.

VOLUME I.
(Pages 1 to 352, Inclusive.)

Upon Writ of Error to the United States District Court
of the Territory of Alaska, Fourth Division.

Filed

SEP 23 1916

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

Page

Affidavit of Bion A. Dodge.....	67
Affidavit of R. R. Douse, in Support of Motion for Appointment of Uninterested Party to Serve Special Venire, etc.....	22
Affidavit of W. H. Wooldridge, in Support of Motion for Appointment of Uninterested Party to Serve Special Venire, etc.....	18
Arraignment	8
Assignment of Errors	633
Bill of Exceptions	74
Bond on Writ of Error	658
Certificate of Clerk U. S. District Court to Tran- script of Record	666
Citation	663
Defendant's Exceptions to Instructions of Court to Jury	617
EXHIBITS:	
Plaintiff's Exhibit No. 1—Statement of J. P. Rose	29, 230
Hearing on Motion	65
Indictment	4
Instructions Requested by Defendant	622
Instruction to the Jury.....	599
Judgment	71

Index.	Page
Minutes of Court—February 19, 1916.....	7
Minutes of Court—February 19, 1916.....	8
Minutes of Court—February 23, 1916.....	9
Minutes of Court—February 24, 1916.....	9
Minutes of Court—March 1, 1916.....	10
Minutes of Court—March 6, 1916.....	10
Minutes of Court—March 6, 1916.....	11
Minutes of Court—March 7, 1916.....	14
Minutes of Court—March 8, 1916.....	24
Minutes of Court—March 9, 1916.....	27
Minutes of Court—March 10, 1916.....	31
Minutes of Court—March 11, 1916.....	34
Minutes of Court—March 13, 1916.....	37
Minutes of Court—March 14, 1916.....	40
Minutes of Court—March 14, 1916.....	41
Minutes of Court—March 16, 1916.....	13
Minutes of Court—March 25, 1916.....	64
Minutes of Court—March 27, 1916.....	65
Minutes of Court—March 30, 1916.....	66
Minutes of Court—April 4, 1916.....	70
Minutes of Court—April 11, 1916.....	655
Minutes of Court—April 19, 1916.....	660
Motion for Appointment of Uninterested Party to Serve Special Venire, etc.	17
Motion for Extension of Time in Which to Pre- pare, Present and Have Settled Bill of Ex- ceptions	67
Motion for New Trial	43
Motion in Arrest of Judgment.....	63
Motion of Defendant to Instruct Jury to Return Verdict of Not Guilty on First Count of In- dictment	597

Index.	Page
Motion of Defendant to Instruct Jury to Return Verdict of Not Guilty on Second Count of Indictment, etc.	597
Motion of Defendant to Strike Testimony of J. H. Miller, etc.	596
Names and Addresses of Attorneys of Record..	1
Order Allowing Petition for Writ of Error.....	655
Order Allowing Writ of Error and Fixing Amount of Supersedeas Bond	656
Order Approving, Allowing and Settling Bill of Exceptions	630
Order Approving Bond	660
Order Assigning Counsel	8
Order Continuing Time for Sentence to April 8, 1916..	70
Order Denying Motion for New Trial, and for Arrest of Judgment.....	66
Order Directing Release of Defendant.....	660
Order Entering Associate Counsel for Defend- ant.....	10
Order Extending Return Day on Writ of Error, etc.	664
Order Extending Return Day on Writ of Error, etc.	667
Order Extending Time to August 25, 1916, for Preparation, etc. of Bill of Exceptions....	69
Order Fixing Time for Sentence.....	66
Order for Bench Warrant	7
Order Resetting Cause for Trial	10
Order Setting Cause for Trial.....	9
Order Setting Hearing of Motion for New Trial	64

Index.	Page
Order to Supply Jurymen and Bailiffs With Meals and Lodgings	12
Order to United States Marshal	660
Petition for Writ of Error and Supersedeas	632
Plea	9
Praeipie for Transcript	2
Stipulation	1
TESTIMONY ON BEHALF OF PLAINTIFF:	
BERG, GEORGE	251
Cross-examination	263
BUCKLEY, J. J.	456
CASSELS, W. G.	477
Cross-examination	478
CRAWFORD, R. M.	435
Cross-examination	436
HALL, ED.	202
Cross-examination	203
HALL, FRANK B.	458
Cross-examination	463
HERRINGTON, CATHERINE	208
Cross-examination	211
HERRINGTON, GEORGE	380
HERRINGTON, LAURA	75
Cross-examination	91
Redirect Examination	196
Recross-examination	201
HERRINGTON, MRS. EXENA	383
Cross-examination	387
Recalled	482

Index.	Page
TESTIMONY ON BEHALF OF PLAIN- TIFF—Continued:	
Cross-examination	483
In Rebuttal	595
MILLER, J. H.	314
Cross-examination	335
Redirect Examination	377
NORRIS, J. P.	413
Cross-examination	418
PENDERGRAFT, W. W.	447
Cross-examination	448
Redirect Examination	456
ROSE, J. P.	213
Cross-examination	231
SHEAD, H. N.	424
Cross-examination	426
Redirect Examination	434
UTIGAARD, TOM	442
Cross-examination	443
TESTIMONY ON BEHALF OF DEFEND- ANT:	
BERG, GEORGE	499
CLARK, FRANK R.	518
CLARK, J. E.	516
DODGE, B. A.	491
DODGE, BION A.	519
HALL, ED	495
HERRINGTON, MRS. EXENA	502
KENNEDY, AARON	506
Cross-examination	509
Redirect Examination	513

Index.	Page
TESTIMONY ON BEHALF OF DEFEND-	
ANT—Continued:	
MILLER, J. H.....	490
RUNNING, AXEL.....	489
WOOLDRIDGE, W. H.....	519
Cross-examination	545
Redirect Examination	593
Trial Continued—March 7, 1916.....	14
Trial Continued—March 8, 1916.....	24
Trial Continued—March 9, 1916.....	27
Trial Continued—March 10, 1916.....	31
Trial Continued—March 11, 1916.....	34
Trial Continued—March 13, 1916.....	37
Trial Continued—March 14, 1916.....	40
Trial Continued—March 16, 1916.....	13
Trial by Jury.....	11
Verdict	42
Writ of Error.....	661

Names and Addresses of Attorneys of Record.

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Attorney for Plaintiff and Defendant in
Error.

BION A. DODGE, Fairbanks, Alaska.

Attorney for Defendant and Plaintiff in
Error.

T. A. MARQUAM, Fairbanks, Alaska,

Attorney for Defendant and Plaintiff in
Error. [1*]

*United States Circuit Court of Appeals for the Ninth
Circuit.*

W. H. WOOLDRIDGE,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Stipulation.

It is hereby stipulated and consented by and between the attorneys for the parties to the above-entitled cause, that in the printed record of said cause, that after the title has been once printed, the title and caption of all succeeding papers in said printed record be omitted, and the word "Title" substituted therefor; and also after the endorsements and file-marks on the indictment, bill of exceptions and record in said cause has been once printed, the endorsements and unnecessary file-marks on all other

*Page-number appearing at foot of page of original certified Record.

papers in said bill of exceptions and record be omitted, and the word "Indorsements" substituted therefor.

Dated, June 24, 1916.

R. F. ROTH,
United States District Attorney for Fourth Division,
Territory of Alaska, Attorney for Defendant in
Error.

BION A. DODGE,
T. A. MARQUAM,
Attorneys for Plaintiff in Error.

[Endorsed]: No. 2839. In the United States Circuit Court of Appeals for the Ninth Circuit. W. H. Wooldridge, Plaintiff in Error, vs. United States of America, Defendant in Error. Stipulation. Filed Sep. 1, 1916. F. D. Monckton, Clerk.

*In the District Court for the Territory of Alaska,
Fourth Division.*

No. 708—CR.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

W. H. WOOLDRIDGE,

Defendant.

Praecipt for Transcript.

To the Clerk of the Above-entitled Court:

You will please prepare transcript of the record in this cause to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, under the ap-

peal heretofore perfected to said Court, and include in said transcript the following pleadings, proceedings, and papers on file in your office, to wit:

1. Indictment;
2. Arraignment (Journal);
3. Plea (do);
4. Bill of Exceptions complete, including instructions and proposed instructions;
5. Verdict;
6. Motion for New Trial;
7. Motion in Arrest of Judgment;
8. Orders denying each of last above;
9. Order extending time to prepare, present and settle Bill of Exceptions;
10. Judgment and Sentence;
11. Petition for Writ of Error and Supersedeas and allowance;
12. Assignment of Errors;
13. Order Allowing Writ of Error and Fixing Amount of Bond;
14. Bond;
15. Order to U. S. Marshal;
16. Writ of Error;
17. Citation; [2]
18. Order enlarging and extending time of return of Writ of Error and to file transcript of record;
19. All journal entries and orders.
20. Praecipe.

Said transcript to be prepared as required by law and the rules of this court and the United States Circuit Court of Appeals for the Ninth Circuit, and

to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, on or before the first day of September, 1916, pursuant to the order of this court enlarging and extending said time.

Dated this 27th day of May, 1916, at Fairbanks, Alaska.

T. A. MARQUAM,

BION A. DODGE,

Attorneys for Defendant.

[Endorsed]: No. 708-Cr. In the District Court, Territory of Alaska, Fourth Division. United States of America vs. W. H. Wooldridge. Praecipe. Filed in the District Court, Territory of Alaska, 4th Div. May 27, 1916. J. E. Clark, Clerk. By L. F. Protzman, Deputy. [3]

[Title.]

Indictment.

COUNT I.

W. H. WOOLDRIDGE is accused by the Grand Jury of the Territory of Alaska, Fourth Judicial Division, convened at Fairbanks for the regular February, 1916, Term of the District Court by this indictment of the crime of rape, committed as follows, to wit:

That the said W. H. Wooldridge, on the twenty-third day of December, one thousand nine hundred and fourteen, at Fairbanks, Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, and within the jurisdiction of this court, did then and

there wilfully, unlawfully and feloniously carnally know and abuse one Laura Herington, a female child then under the age of sixteen years, to wit, of the age of thirteen years, he, the said W. H. Wooldridge then and there being a male person over the age of twenty-one years, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT II.

W. H. WOOLDRIDGE is further accused by the Grand Jury for the Territory of Alaska, Fourth Judicial Division, convened at Fairbanks for the regular February, 1916, term of the District Court by this indictment of the crime of attempt to commit rape, committed as follows, to wit:

That the said W. H. Wooldridge, then and there being a male person over the age of twenty-one years, on the fourteenth day of February, one thousand nine hundred and sixteen, at Fairbanks, Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, and within the jurisdiction of this court, did then and there, wilfully, unlawfully and feloniously, attempt to unlawfully and feloniously [4] carnally know and abuse one Laura Herington, she being then and there a female person under the age of sixteen years, to wit, of the age of fourteen years, by then and there procuring said Laura Herington to consent to meet him, the said W. H. Wooldridge, at that certain place in Fairbanks known as J. P. Rose's Repair Shop situate on Lacey Street, between First and Second Avenues, for the purpose of

having unlawful and felonious sexual intercourse with him the said W. H. Wooldridge, and by meeting the said Laura Herington at said shop on said day, pursuant to said arrangement, with the unlawful and felonious intent to then and there carry out said arrangement and to carnally know and abuse said Laura Herington, but the said W. H. Wooldridge was prevented and intercepted in the perpetration of said crime.

That the acts done by him, the said W. H. Wooldridge, tended to but failed to effect the commission of the crime of rape, and that by reason thereof the said W. H. Wooldridge did wilfully, unlawfully and feloniously commit the crime of an attempt to commit the crime of rape, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Dated at Fairbanks in the Division and Territory aforesaid this 18th day of February, 1916.

R. F. ROTH,
United States Attorney.

A True Bill.

J. P. NORRIS,
Foreman.

The following are the names of the witnesses examined before the Grand Jury on the finding of the foregoing indictment:

George Herington,	J. P. Rose,
Mrs. Geo. Herington,	Ed Hall,
Laura Herington,	J. H. Miller.

[Endorsed]: No. 708—Cr. District Court, Ter. of Alaska, Fourth Division. The United States of America vs. W. H. Wooldridge. Indictment. Count I, Crime of Rape. Count II, Crime of Attempt to Commit Rape. A True Bill. J. P. Norris, Foreman Grand Jury. Secret. Without Bail. Charles E. Bunnell, District Judge.

Presented to the Court by the foreman of the Grand Jury in open court in the presence of the Grand Jury, and filed in the District Court, Territory of Alaska, Fourth Division, Fairbanks, Alaska. Feby. 19, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [5]

[Title.]

Minutes of Court—February 19, 1916.

Order for Bench Warrant.

The United States Grand Jury having, on this 19th day of February, 1916, returned an indictment against the defendant herein for the crime charged therein, now, on application of R. F. Roth, United States Attorney made in open court,

IT IS ORDERED that the clerk of the court may issue a bench warrant directed to the United States Marshal for the defendant named in said secret indictment, said defendant not to be admitted to bail.

CHARLES E. BUNNELL,

District Judge. [6]

[Title.]

Minutes of Court—February 19, 1916.

Order Assigning Counsel.

Now, at this time, came R. F. Roth, United States Attorney for and in behalf of the Government; came also the defendant herein in the custody of the United States Marshal, and it appearing to the Court that the defendant herein is not represented by counsel, now, for the purpose of arraignment only,

IT IS ORDERED that B. A. Dodge be, and he hereby is, appointed as attorney for the defendant herein.

CHARLES E. BUNNELL,

District Judge. [7]

[Title.]

Minutes of Court—February 19, 1916.

Arraignment.

Now, at this time, came R. F. Roth, United States Attorney, for and in behalf of the Government; came also the United States Marshal, returning the defendant on bench warrant heretofore issued and with defendant's attorney, B. A. Dodge, and the said defendant being brought to the bar of the court and being asked if he is indicted by his true name, and answering that he is, the said indictment was read to the defendant and a copy thereof delivered to him and the defendant asking time in which to plead or otherwise move against said indictment, the

time therefor was fixed by the Court for 10 o'clock A. M., Wednesday, February 23d, 1916, whereupon, defendant was remanded to the custody of the United States Marshal.

CHARLES E. BUNNELL,
District Judge. [8]

[Title.]

Minutes of Court—February 23, 1916.

Plea.

Now, at this time came Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys, for and in behalf of the Government; came also the defendant herein, in the custody of the United States Marshal and with his attorney B. A. Dodge, and the defendant, having on a prior day of this term been duly arraigned, was asked by the Court if he is guilty or not guilty of the crime charged against him in the indictment, namely, first count, rape, second count, attempt to commit rape, to each of which counts, defendant says that he is not guilty, and therefore puts himself upon the country and the United States attorney for and in behalf of the Government doth the same.

CHARLES E. BUNNELL,
District Judge. [9]

[Title.]

Minutes of Court—February 24, 1916.

Order Setting Cause for Trial.

Now, at this time, R. F. Roth, United States At-

torney, Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys, appearing for and in behalf of the Government; came also the defendant in person and in the custody of the United States Marshal and with his attorney B. A. Dodge, and

It is ordered that this cause be, and the same is, hereby set for trial at 10 o'clock A. M., Wednesday, March 1st, 1916.

CHARLES E. BUNNELL,
District Judge. [10]

[Title.]

Minutes of Court—March 1, 1916.

Order Resetting Cause for Trial.

This cause having previously been set for trial on March 1st, 1916.

It is ordered that the same be hereby reset and continued to follow trial of cause No. 714—Cr.

CHARLES E. BUNNELL,
District Judge. [11]

[Title.]

Minutes of Court—March 6, 1916.

Order Entering Associate Counsel.

Now, at this time, R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney appearing in behalf of the Government, and Bion A. Dodge appearing in behalf of the defendant, upon motion of counsel for the defendant, and there being no objections,

It is ordered that T. A. Marquam be, and he hereby is, entered as associate counsel for defendant herein.

CHARLES E. BUNNELL,

District Judge. [12]

[Title.]

Minutes of Court—March 6, 1916—Trial.

Trial by Jury.

Now, at this time, R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney, appearing in behalf of plaintiff; came also the defendant herein in the custody of the United States Marshal and with his attorneys Bion A. Dodge and T. A. Marquam, and this cause having previously been set for trial at this time and now both parties announcing their readiness for trial, the following proceedings were had, to wit:

On the Court's own motion, and there being no objections on the part of the prosecution or defense, the Court ordered that all persons of the general public not properly having business before the Court be excluded from the courtroom during the trial of this cause.

Thereupon, the clerk of the court proceeded to draw from the trial jury-box, one at a time, the names of the members of the regular panel of petit jurors and the respective attorneys proceeded to examine and exercise their challenges against the jurors so drawn.

And it appearing to the Court that during the formation of the jury in this cause and the pendency of the trial said jury should be kept together in charge

of sworn bailiffs, S. T. Kincaid and R. K. Latimer were each duly sworn as bailiffs in charge of said jury.

Hereupon, the jury having been duly admonished by the Court were excused in charge of their sworn bailiffs to report at 2 o'clock P. M.

CHARLES E. BUNNELL,

District Judge. [13]

[Title.]

Order to Supply Jurymen and Bailiffs With Meals and Lodgings.

Now, on this day, to wit, March 6th, 1916, it appearing to the Court that it is necessary that the jury, now in process of formation or having under consideration the law and the evidence as given to them on the trial of the above-mentioned cause, should be kept together and free from communication or association with other persons and in constant charge of two officers of the court, duly sworn;

IT IS NOW THEREFORE ORDERED that the said jury be assigned to the custody of two duly sworn bailiffs, and that the U. S. Marshal for this Division and Territory provide the said jury and bailiffs with meals and lodgings at the expense of the United States, until such time as the jurymen have agreed upon their verdict or have been discharged by the Court.

CHARLES E. BUNNELL,

District Judge.

Entered in Court Journal No. 13, page 439.

[Endorsed]: No. 708—Cr. In the District Court for the Territory of Alaska, Fourth Division. United States of America, Plaintiff, vs. W. H. Wooldridge, Defendant. Order to Furnish Jurymen and Bailiffs with Meals and Lodgings. Filed in the District Court, Territory of Alaska, 4th Div. Mar. 6, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [14]

[Title.]

Minutes of Court—March 16, 1916—Trial.
Trial Continued.

2:00 P. M.

Now, at this time, came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney in behalf of the Government; came also the defendant in the custody of the United States Marshal and with his counsel Bion A. Dodge and T. A. Marquam; came likewise the members of the regular panel of petit jurors and being called and each answering to his name, said trial was resumed and the following proceedings were had, to wit:

Counsel for the respective parties herein continued to examine said jurors previously drawn and exercise their challenges according to law.

At 3:37 o'clock P. M., after being duly admonished by the Court, the jury retired in charge of their sworn bailiffs, and Court declared a recess until 3:50 P. M.

3:50 P. M.

Thereafter, at 3:50 P. M., came the jury heretofore drawn in this cause in charge of their sworn bailiffs;

came also the defendant in the custody of the United States Marshal and the respective attorneys and respective parties herein, and said trial was resumed:

Respective counsel continued to examine said jurors and exercise their challenges as heretofore.

At 5:30 o'clock P. M., after being duly admonished by the [15] Court, the jury retired in charge of their sworn bailiffs, to report at 10 o'clock A. M., tomorrow, Tuesday, March 7th, 1916. The members of the regular panel of petit jurors not yet drawn in said cause were excused to report at 10 o'clock A. M., Tuesday, March 7th, 1916; members excused for cause to report at 10 o'clock A. M., Wednesday, March 8th, 1916.

CHARLES E. BUNNELL,

District Judge. [16]

[Title.]

Minutes of Court—March 7, 1916—Trial.

Trial Continued.

Now, at this time, came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney, in behalf of the Government; came also the defendant, in the custody of the United States Marshal and with his attorneys Bion A. Dodge and T. A. Marquam; came also the members of the regular panel of petit jurors excepting those previously excused for cause in this case, and the following proceedings were had, to wit:

Respective counsel continued to examine the members of the regular panel of petit jurors and exercise their challenges according to law.

Noon hour having arrived the members of the petit jury in the box were duly admonished by the Court and excused in charge of their sworn bailiffs to report at 2 o'clock P. M. Others of the regular panel of petit jurors not yet drawn were excused to report at 2 o'clock P. M.

2 P. M.

Now, at this time, came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney; came also the defendant herein in the custody of the United States Marshal and with his counsel Bion A. Dodge and T. A. Marquam; came also the members of the regular panel of petit jurors not previously excused for cause and being called and each answering to his name, the following proceedings were had, to wit: [17]

Respective counsel continued to examine said jurors and exercise their challenges according to law.

At 3:20 o'clock P. M. the jury retired in charge of their sworn bailiffs, and it appearing that the regular panel of petit jurors will become exhausted, counsel for defendant presented a motion to the Court supported by the affidavits of W. H. Wooldridge, defendant herein, and R. R. Douse, asking for the appointment of a special officer to serve the special venire herein, and after argument by counsel and W. H. Wooldridge, M. O. Carlson and L. T. Erwin each being duly sworn and testifying herein, and the Court having considered said motion and the matters presented therein, and being fully advised in the premises,

It is ordered that said motion of defendant's be

and the same is hereby denied.

At 4 o'clock P. M., Court declared recess until 4:15 o'clock P. M.

4:15 P. M.

Thereafter, at 4:15 P. M., came the members of the regular panel of petit jurors and it was stipulated by respective counsel that all were present; came also the defendant in the custody of the United States Marshal and the respective attorneys and parties herein and said trial was resumed.

Counsel for the respective parties herein continued to examine the jurors heretofore drawn and exercise their challenges according to law until the jury was complete, and consisted of the following persons:

Robert Moore,	Charles McDermott,
G. E. Beraud,	L. J. Heacock,
John Solen,	George Bellows,
E. H. Boyer,	S. R. Bredlie,
Perry Willoughby,	Ezra Buffington,
E. J. Stier,	M. Rosenthal,

which said jurors were duly sworn to try the issues in said cause.

Hereupon, the jury was duly admonished by the Court and excused in charge of their sworn bailiffs to report at 10 o'clock A. M. Wednesday, March 8th, 1916.

CHARLES E. BUNNELL,
District Judge. [18]

[Title.]

**Motion for Appointment of Uninterested Party to
Serve Special Venire, etc.**

The defendant moves that this Court, for the purpose of the selection of unbiased and unprejudiced and impartial jurors, specially appoint an uninterested and indifferent person for the purpose of serving any special venire which may be issued by this Court in the above-entitled case, for the purpose of serving and selecting impartial, unprejudiced and unbiased jurors and to return the same into this court in accordance with the provisions of law.

This motion is based upon the affidavit of the said defendant and upon the affidavit of R. R. Douse presented herewith.

Dated at Fairbanks, Alaska, this 7th day of March, 1916.

T. A. MARQUAM,
BION A. DODGE,
Attorneys for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Mar. 7, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [19]

[Title.]

**Affidavit of W. H. Wooldridge, in Support of Motion
for Appointment of Uninterested Party to Serve
Special Venire, etc.**

United States of America,
Territory of Alaska,
Fourth Division,—ss.

W. H. Wooldridge, being first duly sworn, on oath, deposes and says:—That he is the person mentioned and named in a certain indictment herein, in the above-entitled court, number 708, charged with the offence and offences therein named; that he has been a resident of the Town of Fairbanks, in said Division in said Territory for the last past 13 years; that he is well acquainted with one L. T. Erwin, who is now and for the last three years, has been acting as United States Marshal for said Fourth Judicial Division; that he is also acquainted with the deputies acting under the said L. T. Erwin, namely: M. O. Carlson, William McMullen, J. E. Miller and one Frank Miller, one George Berg, one Frank B. Hall and one J. C. Wood; that he is also acquainted with one Rinehart F. Roth, who is, at the present time, and for more than a year last past, occupies and has occupied a position of United States District Attorney for said Division.

Affiant further says that sometime during the month of May, 1913, he was duly commissioned and acting as notary public in and for the said Territory of Alaska, and, as such notary public, he affixed his

jurat to the oath of one Mrs. P. S. Kieth to a certain affidavit, made and subscribed to by the said Mrs. P. S. Kieth, in which the name of the said United States Marshal, L. T. Erwin, was prominently mentioned, which affidavit and a copy thereof is in the possession of this affiant and can be made a part hereof or produced to this Court if so requested; and the contents of which affidavit [20] are well known to the said United States Marshal, L. T. Erwin; that during the month of January, 1916, this affiant still being commissioned and acting as such notary public affixed his jurat to an affidavit subscribed by one Lou Howard in which affidavit the name of said Rhinehart F. Roth, was prominently mentioned, the contents of which are well known to said Roth and the original or a copy of which is in the possession of this affiant.

Affiant further says that he has reason to believe, and does fairly believe, that this affiant has incurred the criticism and censure and hostility and bitter enmity of the said L. T. Erwin, the said United States Marshal, because of this affiant acting in the said capacity of a notary public aforesaid and otherwise, and the said United States Marshal, L. T. Erwin is, by reason thereof, interested in the prosecution of this case and is desirous that this affiant be convicted of the charge and charges mentioned in said indictment, irrespective of his guilt or innocence thereof; and the said deputies and each and every one thereof is likewise interested in the prosecution of this affiant because of sympathy for the said L. T. Erwin, their employer; and otherwise this affiant has incurred their criticism and censure and hostility and

open enmity and they have sought individually and collectively to involve this affiant in a position of a series of circumstances which were intended to make it appear that this affiant had or was about to incriminate himself, and used their power, by virtue of their respective official positions, and their every individual efforts to that end and purpose, and further that they created and attempted to create the said conditions and brought about many of the surrounding circumstances concerning one of said alleged offences that which this accused is charged, and that owing to said criticism and censure and hostility and open enmity, this affiant has reason to believe and does verily believe that the said present United States Marshal L. T. Erwin and his said deputies and each and every one thereof will look lightly [21] upon a spectacle of a jury packed for the express purpose of prosecuting the accused, this affiant, irrespective of whether or not the said United States Marshal or the said deputies believe him guilty or innocent, and that because of such hostility and open enmity, the said United States Marshal, L. T. Erwin, and the said deputies and each and every one thereof, do not understand and they do not appreciate the value of the legal protection to an accused person as guaranteed by our system of laws.

And this affiant further says that in the event the regular panel of jurors of this term of this court should be exhausted from challenges for cause of peremptory challenges, or be excused for any reason by the Court, and it should become necessary for a special venire to issue out of this court to the said

United States marshal, or any one of his deputies, for service and return for the purpose of procuring sufficient jurors to complete the jury in this case, that this affiant, the person so accused of said alleged offence in said indictment in view of the circumstances surrounding the said alleged offence with which this accused is so charged as aforesaid, would not have a remnant left of that protection which is afforded by a fair trial before an impartial jury.

This affiant alleges that neither the said L. T. Erwin, United States marshal, or his said deputies are uninterested or indifferent as to the outcome of this case and are not fit or proper persons or officials to serve a special venire in this case.

Therefore this affiant respectfully requests that this Court for the purpose aforesaid, shall especially appoint a fit person for the purpose of serving any special venire which this court shall issue and shall administer to him the necessary oath that he will well and truly and impartially serve and return such special writs of venire in accordance with the provisions of law.

W. H. WOOLDRIDGE,

Subscribed and sworn to before me this 7th day of March, 1916.

[Seal]

J. E. CLARK,

Clerk District Court, for the District of Alaska,
Fourth Division.

By Sidney Stewart,
Deputy Clerk of the Court.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Mar. 7, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [22]

Affidavit of R. R. Douse, in Support of Motion for Appointment of Uninterested Party to Serve Special Venire, etc.

United States of America,
Territory of Alaska,—ss.

R. R. Douse, being first duly sworn, on oath deposes and says: That he is a citizen of the United States, twenty-six years of age and a resident of Fairbanks, Alaska; that he is a brother of F. A. Douse who is a resident of the Town of Fairbanks, Alaska; that upon the 29th day of February, 1916, in the afternoon of said day, said F. A. Douse came to the office where affiant is employed as a stenographer, in the Barnett Building, and made the following statement to affiant in substantially the following language, to wit: "I have been down to see Erwin (referring to United States Marshal, L. T. Erwin) to straighten up some books and accounts and expenses of the trip over the trail from Chitina to Fairbanks (wherein the said F. A. Douse had charge of a freighting outfit of the said Erwin). The said Erwin owes me some money for the trip coming in over the trail. He lost money on that trip so I am not going to ask him for it because it is only a few dollars, and it is not worth getting in bad with him for. Erwin is going to give me a job about Friday. He told me he would 'phone up to the house when a special venire was issued. As long

as I am not doing anything I might as well have the money. Erwin told me I could go outside with him as a guard when he took the prisoners out.” At the time the said F. D. Douse did not tell affiant in what case he expected to be summoned as a special venireman; but upon the 4th day of March, 1916, about four o’clock in the afternoon of said day said F. A. Douse, on Cushman Street near the federal jail in the said town of Fairbanks, made the following statement to affiant in substantially the following form: “I was just talking to Erwin and he told me to be around on Monday that a special venire would be called in the Wooldridge [23] case and that I would get on”; and the said F. A. Douse further told affiant “that he would be around where he would be found.” Affiant then said to the said F. A. Douse “How can you possibly be a fair juror in the Wooldridge case? You know that Erwin and Wooldridge are bitter enemies. You have been employed by Erwin and he owes you money, and you expect to go out as a guard with the prisoners with him.” Under these circumstances affiant told the said F. A. Douse that he had no business to sit as a juror in the Wooldridge case; and further told him if he was subpoenaed in the manner in which he expected to be, that affiant would inform Bion A. Dodge (Wooldridge’s attorney) of the fact: That said F. A. Douse then said to affiant: “Don’t you do it, I have always been a good brother to you. What did Wooldridge ever do for you that it makes any difference to you who sits on his jury.” At that the conversation ended, and the said F. A. Douse left affiant

apparently under the impression that he would acquiesce in his request to say nothing about it; and affiant believes that the said F. A. Douse will be subpoenaed in the manner above indicated.

Affiant has prepared and subscribed the foregoing affidavit for the sole purpose of aiding in preventing the jury being unfairly and illegally summoned.

R. R. DOUSE.

Subscribed and sworn to before me this 7th day of March, 1916.

[Seal]

C. C. HEID,

Notary Public for Alaska.

My Commission expires Oct. 21, 1917.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Mar. 7, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [24]

[Title.]

Minutes of Court—March 8, 1916—Trial.

Trial Continued.

Now, at this time, came R. F. Roth, United States Attorney, and Reed W. Heilig, Assistant United States Attorney, in behalf of the Government; came also the defendant in the custody of the United States Marshal and with his attorneys Bion A. Dodge and T. A. Marquam; came likewise the jury heretofore sworn to try the issues in the above-entitled cause and being called and each answering to his name, the trial of said cause was resumed, and the following proceedings were had, to wit:

Opening statement was made by R. F. Roth, United States Attorney in behalf of the Government following by statement by T. A. Marquam in behalf of the defendant.

Laura Herington was duly sworn and took the stand.

Witness retired. The jury was duly admonished by the Court and retired in charge of its sworn bailiffs during presentation and argument of motion and objection by counsel for defendant that no testimony be admitted in evidence in this cause for the reason that Count I and Count II as stated in the indictment herein do not constitute a public offence under the statute and after argument of said motion by counsel herein, the matter was taken under advisement by the Court.

At 12:25 o'clock P. M. the jury returned into court in charge of their sworn bailiffs and having been duly admonished by the Court, was excused in charge of their sworn bailiffs, to report at 2 o'clock P. M.

Court declared recess until 2 o'clock P. M.

2:00 P. M.

Now, at this time came into court R. F. Roth, United States Attorney, [25] and Reed W. Heilig, Assistant United States Attorney; came also the defendant in the custody of the United States Marshal and with his attorneys, Bion A. Dodge and T. A. Marquam; came likewise the jury heretofore sworn to try the issues in said cause in charge of their sworn bailiffs, and said trial was resumed, and the following proceedings were had, to wit:

The jury retired in charge of its sworn bailiffs.

Argument on objection to evidence being admitted in this cause was continued. The Court having considered the matters and things contained in said motion and objections, and being fully advised in the premises, it is ordered that said motion of defendant to the objection to the admission of evidence in this cause be and the same hereby is denied.

Hereupon, the jury returned into court in charge of its sworn bailiffs.

Laura Herington heretofore sworn, resumed the stand and testified in behalf of the plaintiff.

Hereupon the jury was duly admonished by the Court and excused in charge of their sworn bailiffs to report at 3:50 o'clock P. M.

Court declared recess until 3:50 o'clock P. M.

3:50 P. M.

Thereafter, at 3:50 o'clock P. M. came the jury heretofore sworn, in charge of their sworn bailiffs; came also the defendant herein, in the custody of the United States Marshal; came also the respective parties and attorneys herein, and the trial of said cause was resumed.

Laura Herington resumed the stand and testified in behalf of the plaintiff.

Hereupon the jury was duly admonished by the Court and excused in charge of their sworn bailiffs, to report at 8 o'clock P. M.

Court declared recess until 8 o'clock P. M. [26]

8:00 P M.

Now at this time, came R. F. Roth, United States Attorney, and Reed W. Heilig, Assistant United States Attorney in behalf of the Government; came also the defendant in the custody of the United States Marshal, and with his attorneys Bion A. Dodge and T. A. Marquam; came likewise the jury heretofore sworn to try the issues in the above-entitled cause in charge of their sworn bailiffs and the trial of said cause was resumed:

Laura Herington resumed the stand and testified in behalf of the Government on cross-examination.

Hereupon the jury was duly admonished by the Court and excused in charge of their sworn bailiffs to report at 10 o'clock A. M. Thursday, March 9th, 1916.

CHARLES E. BUNNELL,
District Judge. [27]

[Title.]

Minutes of Court—March 9, 1916—Trial.

Trial Continued.

Now, at this time came R. F. Roth, United States Attorney, and Reed W. Heilig, Assistant United States Attorney in behalf of the Government; came also the defendant herein in the custody of the United States Marshal with his attorneys Bion A. Dodge and T. A. Marquam; came likewise the jurors heretofore sworn to try the issues in the above-entitled cause in charge of their sworn bailiffs and being called, and each answering to his name

said trial was resumed, and the following proceedings were had, to wit:

Laura Herington resumed the stand and testified in behalf of the Government.

Ed Hall and Catherine Herington were each duly sworn and testified in behalf of the Government.

At 10:55 o'clock A. M. the jury was duly admonished by the Court and excused in charge of the sworn bailiffs until 11:05 A. M.

11:05 A. M.

Thereafter, at 11:05 o'clock A. M., the defendant in the custody of the United States Marshal, the jury heretofore sworn to try the issues in the above-entitled cause, the respective attorneys and parties all being present, the following proceedings were had, to wit:

J. P. Rose was duly sworn and testified in behalf of the Government.

Noon hour having arrived, the jury was duly admonished by the Court and excused in charge of their sworn bailiffs to report at 2 o'clock P. M. [28]

2:00 P. M.

Thereafter, at 2 o'clock P. M. came the defendant in the custody of the United States Marshal and the respective attorneys and parties as heretofore; came also the jury heretofore sworn to try the issues in the above-entitled cause in charge of their sworn bailiffs; and being called, and each answering to his name, the trial of said cause was resumed, and the following proceedings were had, to wit:

J. P. Rose heretofore sworn, resumed the stand

and testified in behalf of the Government.

The Government offers in evidence the affidavit of J. P. Rose which was received, admitted and marked "Plaintiff's Exhibit 1."

George Berg, Deputy U. S. Marshal, was duly sworn and testified in behalf of the Government.

At 3:50 o'clock P. M., the jury was duly admonished by the Court and excused in charge of their sworn bailiffs, until 4:05 o'clock P. M.

4:05 P. M.

Thereafter at 4:05 o'clock P. M. came the defendant in the custody of the United States Marshal and the respective attorneys and parties as heretofore; came also the jury heretofore sworn to try the issues in the above-entitled cause in charge of their sworn bailiffs and it being stipulated by respective counsel that all were present, said trial was resumed, and the following proceedings had:

George Berg resumed the stand and testified in behalf of the Government.

J. H. Miller, Deputy U. S. Marshal, was duly sworn and testified in behalf of the Government.

Hereupon, the jury was duly admonished by the Court, and excused in charge of their sworn bailiffs, to report at 10 o'clock A. M. Friday, March 10th, 1916.

CHARLES E. BUNNELL,

District Judge. [29]

Plaintiff's Exhibit No. 1—Statement of J. P. Rose.

Wooldridge came in said, "Do you read all the time." Then he got up and said, "I think you are

burning a good deal of light.” I remarked, “It’s 8 o’clock,” and he went out and shut the light off in the front room. He asked me if I was going to the show and I said, “No.” He saw key on the wall and asked me if that was the key to the building, and I told him that that was the front door key. When Laura Herington came in she and Woolridge talked by the heater. Woolridge was standing between me and her and they said a few words which I did not understand. He got up and went out and then I went out for I did not want to be alone with her. Then he, Wooldridge, went back and talked to her in the back room for a few seconds and when he came back out she turned out the light *out*. Woolridge asked me about Laura while I was lying on the bed and said he wanted to screw her or words that gave me to understand that he wanted to have sexual intercourse with her. I answered, “I would not have anything to do with her until after the Grand Jury got through.” I told him the Grand Jury would get hold of a thing of that kind and would in-

J. P. ROSE.

P. McMULLEN.

JOHN C. WOOD.

G. B.

F. B. HALL.

[Seal] [30]

investigate it. I said, “It wouldn’t be safe.” I said in order to get at that they would take her up to Roth’s office and then they would take her to one of the assistants and then back down to the Grand Jury room again and they would sweat her until she would have to tell it. He asked me if that clock wasn’t fast

and I said about seven minutes. When I went back into the house I told her to come on out that somebody was watching her. I recognized who they were and told him so then I turned and went back in and got the girl.

J. P. ROSE.

G. B.

F. B. HALL.

JOHN C. WOOD.

P. McMULLEN.

Subscribed and sworn to before me as J. P. Rose's voluntary statement by J. P. Rose himself.

[Seal] FRANK B. HALL,
Notary Public in and for the Territory of Alaska.

My commission expires Oct. 25, 1919. [31]

[Indorsements.] [32]

[Title.]

Minutes of Court—March 10, 1916—Trial.

Trial Continued.

Now, at this time, R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney appearing in behalf of the Government; came also the defendant herein in the custody of the United States Marshal and with his attorneys Bion A. Dodge and T. A. Marquam; came likewise the jury heretofore sworn to try the issues in the above-entitled cause in charge of their sworn bailiffs and said trial was resumed and the following proceedings were had, to wit:

J. H. Miller Deputy U. S. Marshal, heretofore

sworn, resumed the stand and testified in behalf of the Government.

At 11:05 o'clock A. M., the jury was duly admonished by the Court and excused in charge of their sworn bailiffs until 11:15 o'clock A. M.

11:15 A. M.

Thereafter, at 11:15 o'clock A. M., came the defendant in the custody of the United States Marshal, came the respective counsel and parties as heretofore; came likewise the jury heretofore sworn to try the issues in the above-entitled cause, in charge of their sworn bailiffs and the following proceedings were had, to wit:

J. H. Miller resumed the stand and testified in behalf of the Government.

George Herington was duly sworn and testified in behalf of the Government.

Mrs. George Herington was duly sworn and testified in behalf of the Government. [33]

Whereupon, the jury was duly admonished by the Court and excused in charge of their sworn bailiffs to report at 2 o'clock P. M.

2:00 P. M.

Now, at this time, came the defendant, in the custody of the United States Marshal, came also R. F. Roth, United States Attorney, and Reed W. Heilig, Assistant United States Attorney, in behalf of the Government and Bion A. Dodge and T. A. Marquam, counsel for defendant; came likewise the jury heretofore impaneled and sworn to try *ane* issues of the above-entitled cause, in charge of their sworn bail-

iffs and being called and each answering to his name, the trial of said cause was resumed and the following proceedings had, to wit:

Mrs. George Herington resumed the stand and testified in behalf of the Government.

J. P. Norris was duly sworn and testified in behalf of the Government.

Hereupon, a motion was made by the defense to exclude the testimony of J. P. Norris as a member of the grand jury for this term of court. The jury was duly admonished and excused in charge of their sworn bailiffs during the argument of said motion.

After argument by the respective counsel herein, said motion was denied.

The jury returned into court in charge of their sworn bailiffs, and it was stipulated by respective counsel that all were present.

H. N. Shead was duly sworn and testified in behalf of the Government.

R. M. Crawford was duly sworn and testified in behalf of the Government.

At 4 o'clock P. M. the jury was duly admonished by the Court and excused in charge of their sworn bailiffs until 4:15 o'clock P. M.

4:15 P. M.

Thereafter, at 4:15 o'clock P. M., the jury in charge of their sworn bailiffs, the defendant in the custody of the United States marshal and the respective parties and attorneys being present, the [34] said trial was resumed.

Tom Utigard, W. W. Pendergraft, J. J. Buckley, Frank B. Hall and W. G. Cassels were each duly

sworn and testified in behalf of the Government.

Hereupon the jury was duly admonished by the Court and excused in charge of their sworn bailiffs to report at 10 o'clock A. M., Saturday, March 11th, 1916.

CHARLES E. BUNNELL,
District Judge. [35]

[Title.]

Minutes of Court—March 11, 1916—Trial.

Trial Continued.

Now, at this time came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney, in behalf of the Government; came also the defendant in the custody of the United States marshal and with his attorneys Bion A. Dodge and T. A. Marquam; came likewise the jurors heretofore sworn to try the issues in the above-entitled cause and being called and each answering to his name and it appearing that there are other matters to come before the Court at this time, and respective counsel consenting,

It is ordered that the trial of this cause be continued until 2 o'clock P. M. this day, and the jury having been duly admonished, were excused in charge of their sworn bailiffs until 2 o'clock P. M. this day.

2:00 P. M.

Now, at this time, came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney; came also the defendant in the custody of the United States Marshal and with his at-

torneys Bion A. Dodge and T. A. Marquam; came likewise the jury heretofore sworn to try the issues of the above-entitled cause, in charge of their sworn bailiffs, and said trial was resumed and the following proceedings, had, to wit:

Mrs. George Herington resumed the stand and testified in behalf of the Government.

Government rests.

Hereupon, the jury having been duly admonished by the Court, retired in charge of their sworn bailiffs; whereupon counsel for defendant [36] made a motion for an instructed verdict of not guilty to Count II of said indictment herein, and after argument by respective counsel herein, said motion was denied, to which ruling defendant notes an exception, which exception is allowed.

Motion was then made by counsel for the defendant that counsel for the plaintiff elect under which count in the indictment in this cause the Government relies for conviction and after argument of said motion by respective counsel it was denied, to which ruling defendant notes an exception, which exception is allowed.

Court declared recess until 3:40 P. M.

3:40 P. M.

Thereafter, at 3:40 o'clock P. M. came the jury in charge of their sworn bailiffs; came also the respective parties and attorneys herein as heretofore and the defendant in the custody of the United States Marshal, and the trial of said cause was resumed and the following proceeding had, to wit:

Axel Running was duly sworn and testified in be-

half of the defendant.

J. H. Miller was recalled and testified in behalf of defendant.

Bion A. Dodge, by consent of counsel for the Government, was duly sworn and testified in behalf of the defendant.

Ed Hall was recalled and testified in behalf of the defendant.

The jury, having been duly admonished by the Court, were excused until 8 o'clock P. M.

8:00 P. M.

Now, at this time, came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney in behalf of the Government; came also the defendant in the custody of the United States Marshal with his attorneys Bion A. Dodge and T. A. Marquam; came likewise the jury heretofore sworn to try the issues in the above-entitled cause, in charge of their sworn bailiffs, and the following proceedings were had, to wit:

George Berg, Deputy U. S. Marshal, was recalled and testified in [37] behalf of the defendant.

Defendant offers in evidence a one pint glass bottle which was received, admitted and marked Defendant's Exhibit "A."

Mrs. George Herington was recalled and testified in behalf of defendant.

Aaron Kennedy was duly sworn and testified in behalf of defendant.

Defendant offers in evidence a half pint glass bottle which was received, admitted and marked Defendant's Exhibit "B."

J. E. Clark was duly sworn for and in behalf of defendant.

At 8:35 o'clock P. M. the jury were duly admonished by the Court and retired in charge of their sworn bailiffs.

At 8:42 P. M. the jury returned into court in charge of their sworn bailiffs and having been duly admonished by the Court, were excused in charge of their sworn bailiffs until 10 o'clock A. M. Monday, March 13th, 1916.

CHARLES E. BUNNELL,
District Judge. [38]

[Title.]

Minutes of Court—March 13, 1916—Trial.

Trial Continued.

Now, at this time, came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney in behalf of the Government; came also the defendant in the custody of the United States Marshal with his attorneys Bion A. Dodge and T. A. Marquam; came likewise the jury in this cause in charge of their sworn bailiffs, and the trial of said cause was resumed and the following proceedings had, to wit:

Frank R. Clark was duly sworn and testified in behalf of the defendant.

Bion A. Dodge was recalled and testified in behalf of the defendant.

W. H. Wooldridge, defendant herein, was duly sworn and testified in his own behalf.

Hereupon, the jury having been duly admonished by the Court, were excused in charge of their sworn bailiffs until 11:10 A. M. .

11:10 A. M.

Thereafter, at 11:10 o'clock A. M. came the jury in charge of their sworn bailiffs; came also the defendant in the custody of the United States Marshal and the respective attorneys and parties as heretofore and said trial was resumed.

W. H. Wooldridge resumed the stand and testified in his own behalf.

The jury was duly admonished by the Court and excused in charge of the sworn bailiffs until 2 o'clock P. M.

2:00 P. M.

Now, at this time came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney; came also the defendant [39] in the custody of the United States Marshal with his attorneys Bion A. Dodge and T. A. Marquam; came likewise the jury in charge of their sworn bailiffs and each having answered to his name, the trial of said cause was resumed and the following proceedings had, to wit:

W. H. Wooldridge, defendant herein, resumed the stand and testified in his own behalf.

Defendant rests.

Mrs. George Herington was recalled by the plaintiff and testified in rebuttal.

2:27 P. M. Government rests. Defendant rests.

At 2:27 o'clock P. M. the jury having been duly

admonished by the Court, were excused in charge of their sworn bailiffs until 2:40 P. M.

2:40 P. M.

Thereafter, at 2:40 o'clock P. M. came the respective counsel and parties as heretofore; came also the defendant in the custody of the United States Marshal and said trial was resumed.

Motion was made by the defendant to exclude certain testimony given by J. H. Miller and the Court being advised in the premises, and objection having been made thereto by the United States Attorney, said motion was denied, to which ruling defendant notes an exception, which exception was allowed.

Motion was made by defendant for an instructed verdict on Count I of the indictment herein and objection being made by the U. S. Attorney and the Court being advised in the premises, said motion was denied, to which ruling defendant notes an exception, which exception is allowed.

Motion was made by defendant for an instructed verdict on Count II of the indictment herein and objection being made by the U. S. Attorney and the Court being advised in the premises, said motion was denied, to which ruling defendant notes an exception, which exception is allowed.

At 2:50 o'clock P. M. the jury returned into court in charge [40] of their sworn bailiffs, and it was stipulated by respective counsel that all were present.

At 2:57 P. M. opening argument was made by Reed W. Heilig in behalf of the Government followed by argument by Bion A. Dodge in behalf of the defendant.

Hereupon the jury having been duly admonished by the Court, were excused in charge of their sworn bailiffs until 10 o'clock A. M., Tuesday, March 14th, 1916.

CHARLES E. BUNNELL,
District Judge. [41]

[Title.]

Minutes of Court—March 14, 1916—Trial.
Trial Continued.

Now, at this time came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney for and in behalf of the Government; came also the defendant in the custody of the United States Marshal with his attorneys Bion A. Dodge and T. A. Marquam; came likewise the jury heretofore impaneled and sworn to try the issues in the above-entitled cause in charge of their sworn bailiffs; whereupon the following proceedings were had, to wit:

Argument was had by T. A. Marquam for and in behalf of the defendant.

Hereupon, the jury having been duly admonished by the Court, were excused in charge of their sworn bailiffs until 2 o'clock P. M.

2:00 P. M.

Now, thereafter, at 2 o'clock P. M. came R. F. Roth, United States Attorney, and Reed W. Heilig, Assistant United States Attorney, in behalf of the Government; came also the defendant in the custody of the United States Marshal with his attorneys T. A. Marquam and Bion A. Dodge; came likewise the jury

in charge of their sworn bailiffs and each answering to their names as present, said trial was resumed and the following proceedings had, to wit:

At 2:03 o'clock P. M. closing argument was commenced by R. F. Roth, United States Attorney.

Thereafter, the Court read its instructions to the jury, whereupon S. T. Kincaid and R. K. Latimer were each duly sworn as bailiffs in charge of said jury, and at 4:45 P. M. said jury retired [42] in charge of their sworn bailiffs to deliberate upon their verdict.

CHARLES E. BUNNELL,
District Judge. [43]

[Title.]

Minutes of Court—March 14, 1916.

Verdict.

8:00 P. M.

Now, at this time came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney; came also the defendant in the custody of the United States Marshal, with his attorneys Bion A. Dodge and T. A. Marquam; came likewise the jury heretofore sworn to try the issues of the above-entitled cause in charge of their sworn bailiffs and being called and each answering to his name, the said jury did present, by and through their foreman, in open court, their verdict in said cause, which is in words and figures as follows, to wit:

[Title.]

Verdict.

“We, the jury, in the above-entitled action, duly impaneled and sworn, do find the defendant not guilty of the crime of rape charged in Count I of the indictment, and do find the defendant guilty of the crime of attempt to commit rape charged in Count II of the indictment.

Fairbanks, Alaska, March 14, 1916.

L. J. HEACOCK,
Foreman.”

—which said verdict was received by the Court and ordered filed with the clerk of the court.

The jury was discharged from further deliberation in said cause and the defendant was remanded to the custody of the United States Marshal to await sentence.

CHARLES E. BUNNELL,
District Judge. [44]

[Title.]

Verdict.

We, the jury in the above-entitled action, duly impaneled and sworn, do find the defendant not guilty of the crime of rape charged in Count I of the Indictment, and do find the defendant guilty of the crime of attempt to commit rape, charged in Count II of the Indictment.

Fairbanks, Alaska, March 14, 1916.

L. J. HEACOCK,

Foreman.

Entered in Court Journal No. 13, page 452.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Mar. 14, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [45]

[Title.]

Motion for New Trial.

The defendant in the above-entitled action now moves the Court to vacate and set aside the verdict of "Guilty," returned by the jury in the said action, to the charge contained in the second count of the indictment against the defendant, upon the fourteenth day of March, 1916, and to grant a new trial to the defendant upon and for the grounds, reasons and causes affecting the substantial rights of the defendant as follows:

1. Irregularity in the proceedings of the court and abuse of discretion exercised by the Court by which defendant was prevented from having a fair trial in this:

J. E. Gatrell, a juror in the regular panel, was improperly excused from service on the jury in said action over the objection of defendant after he had duly and properly qualified as such juror by stating he could give defendant a fair and impartial trial by giving in substance to the testimony of a certain witness upon the trial of said cause, the weight and credibility to which he thought the same entitled and

to the excusing of the juror the defendant duly excepted.

A. J. Painter, a juror on the regular panel, was improperly excused by the Court from service on the jury in said action, over the objection of the defendant, after said juror had duly qualified himself as such juror by stating [46] he would and could be fair and impartial, but in substance said he would give the defendant the benefit of the doubt so far as his conscience would permit and the law would allow; that he would and could follow the instruction of the Court; to the excuse of which juror by the Court, the defendant duly excepted.

2. Insufficiency of the evidence to justify the said verdict of "Guilty" upon said second count in said indictment and that it is against law, because:

The testimony falls far short of establishing the commission charged or any offense insomuch as it fails to prove or tend to prove there was an intent to commit a crime, and the testimony fails to prove any overt act done or committed by the accused to commit a crime with such intent, and that whatever act or acts were done amounted at the most to but mere solicitation without any subsequent effort whatever towards a commission of an offense as defined by the Alaska statute, making an attempt a *substantiave* offense, the mere act of solicitation as disclosed by the testimony is not an attempt. Nor was any act disclosed by the testimony which proved or tended to prove the commencement of the consummation of any attempt whatever; but, on the contrary, tended to and did conclusively show voluntary abandonment of any at-

tempt, if any there was. The whole of the testimony also shows there was no act or acts by any person or persons whomsoever whereby any alleged attempt to commit an offense by the accused was prevented or intercepted.

3. Errors in law occurring at the trial, and duly excepted to by the defendant, viz:

In answer to the question asked by the United States Attorney: "Did you hear any talk during that time [47] (between two or three days before Christmas) with Laura Herington about W. H. Woolbridge" (at the Morency house), the witness Ed Hall answering "Yes." Then in answer to the question: "What did he tell you?" testified over objection of defendant as follows: "She told me she was on the way home and met defendant at Gordon's Glass Block and he asked her to take a walk with him; she went to a cabin across the way from his place and defendant done something to her and had given her two dollars fifty cents and owed her a dollar more." To which testimony and similar testimony and the whole of the testimony of the said Ed Hall the said defendant then and there duly objected upon the ground the same was incompetent, immaterial and irrelevant heresay and not a part of the *res gestae*, and not in the nature of a complaint nor intended to be a complaint and not made to a person to whom a complaint would naturally be made. Which objection in substance as above stated the Court overruled and the defendant duly excepted.

The witness John P. Rose, after having duly testified on behalf of the Government, was shown a paper

by the United States Attorney and asked in substance if his signature was subscribed thereto. To which question defendant objected on the grounds the same was incompetent, immaterial, irrelevant, no foundation laid and defendant's counsel having not inspected said writing, which objection was overruled by the Court, to which defendant excepted. The Government attorney then read from said paper certain detached portions to the witness Rose among others, "Did not Wooldridge ask you about Laura Herington and gave you to understand that he (Wooldridge) desired to have sexual intercourse with said Laura Herington"? To which question and to questions of a similar nature defendant duly objected because the same were leading and were asked for the purpose of impeaching the Government witness and no foundation having been laid. [48] And other objections made thereto as to the same appears in the stenographic notes of the reporter in said court, which objection and objections and the every thereof were overruled by the Court and duly excepted to by the defendant. And other and like and similar questions based upon and read from said paper were propounded to said witness Rose, to which objection was duly made by counsel for defendant as the same appears in said stenographic notes, which objections were overruled by the Court and exceptions duly taken by defendant. And the Government counsel asked the said witness Rose whether he did not testify before the grand jury in the Wooldridge case and stated to said grand jury among other things in answer to the questions

there asked him, "If there was a key to the building and you said it was a key to the front door," or words to that effect; which question was duly objected and excepted to by defendant upon the grounds the same was incompetent, irrelevant and immaterial, leading and an effort on behalf of the Government to impeach its own witness, and other objections made by defendant as the same appears in said stenographic notes. And the Government asked other and similar questions of like nature concerning alleged conversations had by witness with defendant in the place of business of said witness, to which question and questions, and each and every thereof, whether based upon said written paper or otherwise, the defendant duly objected for the grounds and reasons specified in said stenographic report, which objections were by the Court overruled, to which the defendant duly excepted.

And the counsel for the Government offered said written statement in evidence to which the defendant objected on the ground that the same was incompetent, and immaterial and irrelevant, and was for the purpose of impeaching their [49] own witness. Which objection was overruled by the Court and duly excepted to by the defendant, and other questions were so propounded by the Government to the witness Rose in the matter and in the manner of his making the said written statement and as to the matters and things to which he testified before the grand jury, which testimony was for the apparent purpose of discrediting the truth of the testimony of the said witness upon his direct examination, to which

and each and every question and matter and thing therein and the whole thereof the defendant objected to the introduction thereof before said jury, upon the grounds that the same was incompetent, irrelevant and immaterial, leading, suggestive for the purpose of impeaching their own witness and other objections as they appear in said stenographic notes. Which objections were overruled to which defendant duly excepted.

The witness George Berg having his attention called to the paper above referred to alleged to have been signed by the witness Rose in answer to the question as to whether he had heard the conversation and circumstances leading up to the said signature of the said Rose, answered he was present in the marshal's office that evening in substance. To which testimony of said Berg and all of his testimony relating to the signing of said statement by the witness Rose and as to the statements made by said Rose at said time and place, the defendant duly objected upon the grounds that the same were incompetent, irrelevant and immaterial, leading and was an attempt to impeach the Government witness Rose, and other objections stated in the said stenographic report. Which objections were overruled by the Court, to which defendant duly excepted [50] and the witness Berg in response to a question for that purpose over the objection of the defendant and exception thereto, testified in substance: "Sometime in the fore part of February, I was informed that I was to undertake the investigation of Wooldridge, and also to learn whether or not Laura Herrington was

telling the truth," all of which testimony and testimony of like and similar character was objected to by the defendant upon the grounds stated in said stenographic report, which objections were overruled by the Court and duly excepted to by the defendant.

The witness J. H. Miller for the Government, the chief deputy marshal, in answer to a question in substance as to when he first heard of the matters and things involved in the second count of the indictment in the district attorney's office, stated in substance; "You (Roth) asked me to get George Herrington and Laura Herrington and I got them and brought them to your office, and there you (Roth) or myself or both of us asked them about Wooldridge and others." Which questions and which answers were duly objected to by the defendant for the reason that they were incompetent, and hearsay and were not asked in the presence of the defendant. Which objections were overruled by the Court, to which the defendant duly excepted. Thereupon the said witness Miller proceeded to detail a conversation and conversations had with the Government attorney Roth, one Laura Herrington and George Herrington, in the absence of the presence of the defendant Wooldridge. Which conversation related to and referred to all of the alleged facts and circumstances involved in the two counts set forth in the indictment in this action. Such conversations detailed and depicted the alleged offense charged [51] in said first count and detailed all the facts and circumstances, incidents, acts, conversations between other persons concerning and relating to the charge in the

said second count of said indictment. To which the counsel for the defendant duly objected to each and every of said conversations and the answers of the said witness Miller to the question of the Government attorney relating thereto upon the ground and because the same were incompetent, were hearsay and were not had in the presence of the defendant, and other objections as the same appear in said stenographic notes. Which objections and each thereof were overruled by the Court, to which the defendant duly excepted. And upon the completion of the said direct testimony counsel for the defendant moved to strike out the said testimony of the said Miller, which motion was denied by the Court, to which the defendant duly excepted.

And the witness Miller also testified in response to direct questions for that purpose in substance that he had taken a statement in writing of the said witness Rose in the presence of the Deputy marshals McMullen, Hall and Berg, and that the said statement of the said Rose was written by him pursuant and in answer to questions, statements, interruptions, interjections by himself and the said deputies especially the deputy Berg and afterwards signed by the said witness Rose. To which testimony and all testimony of a like and similar character on the part of the said witness Miller, the defendant duly objected, upon the grounds that the same was incompetent, irrelevant, immaterial, and an [52] attempt to impeach the testimony of the Government witness Rose, and other objections stated in said stenographic report. Which objections and each

thereof were overruled by the Court and duly excepted to by the defendant.

The testimony of the witness J. P. Norris, a member of the grand jury, which found said indictment, in reponse to the questions of the Government counsel for that purpose was to the effect that the witness Rose was sworn before said grand jury, and thereupon Government counsel read to said witness Norris extracts from said purported signed statement of said witness Rose and asked the witness Norris if that was what Rose testified to before the grand jury, to which question and questions of like manner and similar nature the said witness Norris answered "yes," to which question and questions and answer and answers the defendant duly objected upon the grounds that the said question and questions were improper and did not test the recollection of the witness Norris, and that the same were incompetent, irrelevant, immaterial, leading, hearsay because the defendant was not present, and that no foundation had been laid for the impeachment of the witness Rose, who was a Government witness and was sought to be impeached by the Government itself. To which objection and such other objections as appear in the stenographic report and each and every thereof were overruled by the Court, to which the defendant duly excepted.

The witness H. N. Shead a member of said grand jury was asked substantially as to the same matters from the same instrument concerning the testimony of the witness Rose before said grand jury, and to the same effect were his answers as were the witness

Norris and to which for the same [53] reasons and causes the same objections were made by the defendant, overruled by the Court and excepted to by the defendant.

The witnesses R. M. Crawford, Tom Utaguard, and William Pendagraft, each being grand jurors before whom said witness Rose had appeared to testify each being respectively and in the order named, interrogated by the said Government attorney from the said purported statement of said Rose reading therefrom in the language thereof the statements therein in answer thereto each answered in response thereto "yes," to which testimony and the testimony of each of said witnesses as the same was introduced the counsel for the defendant duly objected for the reason that the propounding of a question of that character in that form did not call for the recollection of the testimony of the said witnesses but on the contrary called for a categorical answer to a question that was taken verbatim from said alleged signed statement, and did not and could not test the recollection of said witness and witnesses as to what Rose had really testified to before said grand jury. Objection was further made because said question was leading, because it was hearsay, because it was not said in the presence of the defendant, because it was incompetent and immaterial and irrelevant for any purpose, and because it was not a proper impeaching question, and because no foundation had been laid for the purpose of impeaching the testimony of the Government's own witness, Rose. Which objections and each thereof and the

other objections in the stenographic notes were overruled by the Court, to which the defendant duly excepted.

The witness Frank B. Hall a deputy marshal [54] testified in response to leading questions that he was present in the rear room of the marshal's office on the evening of February 15th, 1916, at which were present deputy marshal Miller, McMullen, Berg, himself and witness Rose, and that Rose made such alleged statements in response to inquiries made by him by Miller and Berg taken down and written by Miller intermittently as the questions, statements and conversations called forth answers from said Rose, and after having been completed was read to said Rose by said witness Hall, which testimony and the whole and each and every part and portion thereof was introduced and testified to by the said Hall over the objections of the defendant which objections were that it was intended to impeach the testimony of said Rose, no foundation had been laid therefor, it was hearsay, it was to impeach the Government's own witness, the defendant was not present and it was immaterial, incompetent and irrelevant for any purpose, which objections and each thereof together with the objections that appear in said stenographic report the Court then and there overruled to which the defendant then and there duly excepted.

The witness Laura Herrington was recalled by the Government after the cross-examination and upon redirect examination by the Government was asked the following questions; "Did you lay down on the

coat"? Answered "Yes." Objected to by defendant not proper redirect examination, leading, self-serving and other objections stated in said stenographic report, which objections and each thereof were overruled to which defendant excepted. Government counsel then asked "Were your legs apart" to which counsel for the defense objected upon the grounds the question was [55] leading, was not proper redirect examination, incompetent and other objections urged in said stenographic report, which objections were overruled by the Court, to which the defendant duly excepted, whereupon the witness answered "yes." The Government then asked "what defendant did with her?" to which objection was duly made, not proper redirect examination and incompetent, and other objections which appear in said stenographic report, which objections were overruled, to which exception was taken by defendant. Whereupon witness answered; "I can't explain it." The Government counsel then asked the following question, "did you have sexual intercourse?" to which question defendant objected upon the grounds that the same was leading and suggestive, was not proper redirect examination, was self-serving, was incompetent and the objections stated in said stenographic report, which objections were overruled by the Court, to which the defendant duly excepted. Thereupon the witness answered, "yes."

And for the reason and because of said errors of law occurring at said trial and excepted to by the defendant and other errors occurring therein by the improper interrogation of witnesses duly objected to

by the counsel for defendant, and excepted to when the Court overruled said exceptions which cannot be recalled in the brief period of time provided for the filing of a motion for a new trial which more fully appear in the shorthand notes made at said trial, the defendant is entitled to have said verdict set aside.

At the close of the testimony of the Government counsel for the defendant moved the Court to direct a verdict to be found by the jury upon said second count in said indictment that the defendant be found "not guilty" upon the [56] grounds and for the reason that the testimony of the Government failed to establish the commission of the offense charged in said second count of said indictment or any offense whatever, and for the reason that such evidence failed to prove or tended to prove there was any intent to commit a crime; that it failed to prove or tend to prove any overt act committed by the accused with intent to commit an offense; that such evidence failed to prove or tend to prove anything more than mere solicitation and that it failed to prove or tend to prove any subsequent act or effort whatever approaching to any degree whatever the necessary commencement of the consummation of any attempt to commit an offence. This is the substance of said motion, the exact words of which appear in said stenographic report.

The counsel for the defendant also at said time moved and assigned as a reason therefor in substance that the second count in said indictment failed to

charge any offence whatever under the statutes of Alaska.

Counsel for defendant at said time and place also moved in substance that the Government then and there elect on which count in said indictment the Government would stand and on which count it would elect to have a verdict found. Which motions and each thereof were by said *said* Court then and there denied, to the denial of such motions, and each thereof, by the said Court the said defendant by his counsel then and there duly excepted.

The defendant called as a witness one J. E. Clark, the clerk of said court, after the usual preliminary questions asked said witness Clark the following question; "Have you among your records a record in you office of an [57] indictment against J. P. Rose for rape?" to which objection was immediately made by Government counsel and sustained by the Court before counsel for defendant could be heard. To the sustaining of which objection counsel for the defendant duly excepted.

At the close of the testimony in said case counsel for the defendant renewed the motion to the Court that the Court instruct said jury to find a verdict of "not guilty" upon the second count of said indictment for the reason in substance; that the evidence in said case fails to establish the commission of any offence whatever, and that the said count in said indictment fails to charge an offence. Which motion was by said Court then and there denied and to the denial of which counsel for the defendant then and there duly excepted. [58]

Errors in law in giving instructions to jury, and duly excepted to by defendant, as follows:

Defendant excepts to instruction number 12 given and read to the jury by the Court for the reason that it is an abstraction purely, and not directing the jury's attention to the particular evidence referred to, and in no wise aiding them to come to a correct conclusion as to the evidence the effect of which is sought to be limited.

Defendant excepts to instruction number 13 as given and read to the jury by the Court, as not correctly stating the law attempted to be covered in said instruction.

Defendant excepts to instruction number 15 as given and read to the jury by the Court, for the reason that it is an abstraction, tends to mislead, and is not a correct statement of the law attempted to be charged.

Defendant excepts to instruction number 17 as given and read to the jury by the Court, as not a correct statement of the law attempted to be covered in said instruction. [53]

Defendant excepts to instruction number 18 as given and read to the jury by the Court, as singling the defendant out from all other witnesses in the case and laying special stress upon the question of his interest in the result of the trial, where as a matter of fact the instruction should apply to all the witnesses in the case if the jury believe they have any interest in the result of the trial.

The defendant excepts to instruction number 20

as given and read to the jury by the Court for the reason that the same is not a complete or accurate statement of the law attempted to be covered by said instruction, and not properly covered by other instructions in the case.

Defendant excepts to instruction number 21 as given and read to the jury by the Court for the reason that the same is not a correct statement of the law attempted to be covered therein; and for the further reason that nowhere else in said instructions are the omissions, constituting a correct statement of the law involved in this construction of the law, supplied.

Defendant excepts to instruction number 22 as given and read to the jury by the Court, for the reason that the same is not an accurate statement of the law involved and attempted to be charged in said instruction, nor is the error corrected or cured in other instructions in the case. [60]

Defendant excepts to instruction number 23 as given and read to the jury by the Court, for the reason that the same is not a correct statement of the law attempted to be charged in said instruction.

Defendant excepts to instruction number 23, as given and read to the jury by the Court, for the reason that the same is not a correct statement of the law attempted to be charged in said instruction, and that the defects therein are not supplied by any other instructions.

Defendant excepts to instruction number 25, as given and read to the jury by the Court, for the reason that the same is not a correct statement of the

law attempted to be set out in said instruction.

Defendant excepts to instruction number 26, as given and read to the jury by the Court, for the reason that the same is not a correct statement of the law, misleading, and that the jury should have been instructed to totally disregard statements made by the witness Laura Herrington to said Ed Hall; and for the further reason that they are not competent to prove any fact involved in this case.

Defendant excepts to instruction number 27, as given and [61] read to the jury by the Court, for the reason that the same is incomplete, misleading, and not a correct statement of the law attempted to be given in said instruction.

Defendant excepts to instruction number 28, as given and read to the jury by the Court, for the reason that the same is incomplete, misleading, not a correct statement upon the question of intent, and the necessary proof required to prove such intent upon the part of the defendant.

Defendant excepts to instruction number 29, as given and read to the jury by the Court, for the reason that the same is incomplete, misleading, and not a correct or accurate statement of the law of corroboration of a female upon whom a rape is alleged to have been committed.

Defendant excepts to instruction number 30, as given and read to the jury by the Court, for the reason that the same is not a correct statement of the law attempted to be charged in said instruction.

Defendant excepts to instruction number 31, as given and read to the jury by the Court, for the rea-

son that the same is an abstraction, and for the further reason that the latter part of said instruction has no application to any facts in this case or to the crimes charged in this case, and is misleading, and tends to confuse and mislead the jury upon the question of abandonment. [62]

Defendant excepts to instruction number 32, as given and read to the jury by the Court, for the reason that the same is involved, confusing, contradictory in itself, misleading, not applicable to the issues presented in the indictment; that it is not the law of the case from any standpoint, and the hypothesis upon which it is based fails to collate all the material elements of the charge as a basis for the conclusion of guilt.

The defendant excepts to the ruling of the Court refusing to give and read to the jury instructions from number 1 to 11, both inclusive requested by the defendant, for the reasons that the same are correct statements of law as to the points covered by said instructions, and no similar, proper or adequate statements of the law have been given elsewhere by the Court in his instructions as given and read to the jury.

The COURT.—All of which exceptions are allowed. The Court desires to modify instruction number 12. (Reads.) “You are instructed that certain testimony has been admitted in this case for specified and limited purposes, which, at the time of its reception by the Court, was so limited. You will bear in mind and confine yourselves in the consideration of such testimony to the limited purpose for

which it was admitted.” That is instruction number 12 as originally read to you. Now, in addition to that, the Court has added: (Reads:) “A particular application of this instruction is directed to the evidence of the witness J. H. Miller, wherein he [63] testified to statements made to him by Laura Herrington prior to the investigation testified to by him, said testimony having been admitted for limited purposes as stated to the jury by the Court at the time of its reception.”

The defendant excepts to instruction number 12, as amended by the Court and as read to the jury, for the reason that the same is an abstraction, and in failing to tell the jury or instruct them as to what purpose, if at all, the same could be lawfully and legally considered by them; that the Court should have instructed the jury in this connection that all of the evidence of the witness J. H. Miller with reference to any conversation upon the part of Laura Herrington relative to the commission of the offense charged in Count I of the indictment herein was hearsay evidence, not competent to be considered by the jury for any purpose, and should have been withdrawn by the instructions of the Court from the consideration of the jury; that if there is any lawful purpose or legal reason why said testimony could or should be considered by the jury, that such specific purpose should be pointed out to the jury and should not be left to the jury to guess at.

The COURT.—Which exception is allowed. [64]

For the reason, upon the grounds and because of the above-mentioned errors of law occurring at the

trial of said action and excepted to by the defendant, and for the further reason that because and upon the grounds of all error and errors occurring at the trial of said cause and excepted to by the defendant, which more fully appear in the shorthand notes of the court reporter taken in said cause at the trial thereof, the defendant in said cause was prevented from having a fair and impartial trial.

Upon the grounds and for the reason and because of the insufficiency of the evidence in said cause to justify the jury in said cause in finding a verdict of guilty upon the second count contained in said indictment the defendant in said cause is entitled to have said verdict vacated and set aside.

For the reason and because of error at law occurring at said trial and excepted to by the defendant in the matter of giving instructions to said jury, the court refused to give the instructions requested by the defendant numbered one to eleven inclusive; the jury was not properly advised and instructed as to the substantive law and rules of evidence applicable to the said cause.

T. A. MARQUAM,

BION A. DODGE,

Attorneys for Defendant.

Service of the above motion is hereby admitted by receipt of a copy hereof this 16th day of March, 1916.

REED W. HEILIG,

Asst. U. S. Attorney. [65]

[Endorsed]: No. 708—Cr. In District Court, Territory of Alaska, Fourth Division. United States of America, Plaintiff, vs. W. H. Wooldridge, Defendant.

Motion for New Trial. Filed in the District Court, Territory of Alaska, 4th Div., Mar. 16, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [66]

[Title.]

Motion in Arrest of Judgment.

The defendant in the above-entitled action, on this 16th day of March, A. D. 1916, after the verdict of guilty found by the jury upon the second count in the indictment against the defendant in said action upon the trial thereof, which was concluded on the 14th day of March, 1916, and before the rendition of judgment by the Court upon said verdict, now moves the court to arrest the judgment in this cause and discharge the defendant from this Court for the following reasons:

1. That the said second count in said indictment does not conform to the requirements of chapter seven, title fifteen, of the Code of Criminal Procedure for the Territory of Alaska, because:

The facts stated in the second count of said indictment do not constitute a crime.

Wherefore and for the reasons apparent in said indictment, and the second count therein, and the record, the defendant prays that said judgment be arrested.

T. A. MARQUAM,
BION A. DODGE,
Attorneys for Defendant.

Service of the copy foregoing motion in arrest of Judgment received this 16th day of March, 1916.

REED W. HEILIG,

Asst. U. S. Attorney.

Attorney for Plaintiff.

[Endorsed]: No. 708—Cr. In District Court, Territory of Alaska, Fourth Division. United States of America, Plaintiff, vs. W. H. Wooldridge, Defendant. Motion in Arrest of Judgment. Filed in the District Court, Territory of Alaska, 4th Div., Mar. 16, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [67]

[Title.]

Minutes of Court—March 25, 1916.

Order Setting Hearing of Motion for New Trial.

Now at this time came R. F. Roth, United States Attorney in behalf of the Government; came also the defendant in the custody of the United States Marshal with his attorneys Bion A. Dodge and T. A. Marquam and respective counsel consenting,

IT IS ORDERED that hearing on defendant's motion for a new trial in this cause be, and the same is, hereby set for Monday, March 27th, 1916, to following hearing in cause No. 700—Cr. United States, vs. Carl Johanson.

CHARLES E. BUNNELL,

District Judge. [68]

[Title.]

Minutes of Court—March 27, 1916.

Hearing on Motion.

Now, at this time, came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney in behalf of the Government; came also the defendant herein in the custody of the United States Marshal and with his attorneys Bion A. Dodge and T. A. Marquam and defendant's motions for a new trial and arrest of judgment came on regularly before the Court and argument was had by respective counsel.

Court declared recess until 2 P. M.

2:00 P. M.

Now, at this time, came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney in behalf of the Government; came also the defendant in person and in custody of the United States Marshal and Bion A. Dodge and T. A. Marquam appearing in behalf of defendant, defendant's motions for a new trial and arrest of judgment came on for continuance of hearing and argument having been had by respective counsel, the matter was taken under advisement by the Court.

CHARLES E. BUNNELL,

District Judge. [69]

[Title.]

Minutes of Court—March 30, 1916.

Order Denying Motions.

Now, at this time, came R. F. Roth, United States Attorney and Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys in behalf of the Government; came also the defendant in the custody of the United States Marshal and with his counsel Bion A. Dodge and T. A. Marquam, and defendant's motions for a new trial in this cause and for arrest of Judgment herein having been previously argued before the Court and submitted and the Court now being fully advised,

It is ordered that said motions be, and the same hereby are, denied.

(Clerk's Note: Defendant excepts to above ruling, which exception is allowed.)

CHARLES E. BUNNELL,

District Judge. [70]

[Title.]

Minutes of Court—March 30, 1916.

Order Fixing Time for Sentence.

Now, at this time came R. F. Roth, United States Attorney and Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys in behalf of the Government; came also the defendant in the custody of the United States Marshal with his attorneys Bion A. Dodge and T. A. Marquam, and there being no objections,

It is ordered that the time for pronouncing sentence upon the defendant herein be, and the same hereby is, fixed at 10 o'clock A. M., Tuesday, April 4th, 1916.

CHARLES E. BUNNELL,
District Judge. [71]

[Title.]

**Motion for Extension of Time in Which to Prepare,
Present and Have Settled Bill of Exceptions.**

Motion is hereby made by the defendant in the above-entitled action for further time to prepare, present and have settled Bill of Exceptions in the above-entitled cause.

T. A. MARQUAM,
BION A. DODGE,
Attorneys for Defendant.

[Endorsed]: No. 708—Cr. In District Court, Territory of Alaska, Fourth Division. United States of America, vs. W. H. Wooldridge. Motion for Extension of the Time Within Which to Prepare, Present and have Settled Bill of Exceptions. Filed in the District Court, Territory of Alaska, 4th Div., Apr. 5, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [72]

[Title.]

Affidavit of Bion A. Dodge.

United States of America,
Territory of Alaska,—ss.

Bion A. Dodge, being first duly sworn, on oath deposes and says: That T. A. Marquam, Esq., and this

affiant were the persons retained by the defendant in this case to represent him in the defense of said action, the trial of which action was commenced on the 6th day of March, 1916, and continued until the 15th day of March, 1916, resulting in a verdict of guilty upon the second count; that upon the 17th day of March, 1916, a motion for a new trial was duly filed and the same was heard on the 27th day of March, 1916 and on Thursday, the 30th day of March, 1916, the said motion for a new trial was duly denied and the date for pronouncing judgment upon the defendant was then and there on said last-named date fixed for Tuesday, the 4th day of April, 1916; that on said last-named date the time for pronouncing judgment was then and there duly continued until Saturday, the 8th day of April, 1916.

Affiant further says that from whatsoever judgment this Court may in its power and the exercise of its discretion may pronounce against the said defendant, this defendant desires to and has made preparations for appeal therefrom, and to that end has already arranged with Mr. E. T. Wolcott, the official court stenographer, and reporter, for a certified copy of the transcript of his reporter's notes, which transcript this affiant is informed will be made and extended at or about the departure of the Court down river [73] in June; that it will be necessary to submit the same to the United States Attorney and thereafter to settle the same.

Therefore this affiant respectfully requests this Court to extend the time for the preparation, presentation and settlement of the Bill of Exceptions in

this case until the 25th day of August, 1916, or until the Court shall return from down river.

Affiant further says that the defendant in this action feels himself aggrieved at the verdict of the jury in said case and desires to appeal from the judgment to follow said verdict whatever the same may be, and that said appeal is taken in good faith and for no other purpose.

BION A. DODGE.

Subscribed and sworn to before me this 5th day of April, 1916.

[Seal]

C. C. HEID,

Notary Public in and for Alaska.

My commission expires October 21, 1917.

[Endorsed]: No. 708—Cr. In District Court, Territory of Alaska, Fourth Division. United States of America, vs. W. H. Wooldridge. Affidavit of Bion A. Dodge. Filed in the District Court, Territory of Alaska, 4th Div., Apr. 5, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [74]

[Title.]

Order Extending Time to August 25, 1916, for Preparation, etc., of Bill of Exceptions.

Order Extending Time for Preparation, Presentation and Settlement of Bill of Exceptions.

WHEREAS, the defendant in the above-entitled action has moved this Court for further time within which to prepare, present and have settled his Bill

of Exceptions in the above-entitled action, and in that behalf one of the attorneys for the defendant has filed an affidavit showing the reasons and causes therefor,

NOW, THEREFORE, IT IS HEREBY ORDERED that the time for the preparation, presentation and settlement of the Bill of Exceptions in the above-entitled action shall be, and the same is, hereby extended until the 25th day of August, 1916.

Dated Fairbanks, Alaska, April 5th, 1916.

CHARLES E. BUNNELL,
District Judge.

Entered in Court Journal No. 13, page 514.

[Endorsed]: Original. No. 708—Cr. In the District Court, Territory of Alaska, Fourth Division. United States of America, vs. W. H. Wooldridge. Order Extending Time for Preparation, Presentation, and Settlement of Bill of Exceptions. Filed in the District Court, Territory of Alaska, 4th Div., Apr. 14, 1916. J. E. Clark. By Sidney Stewart, Deputy. [75]

[Title.]

Minutes of Court—April 4, 1916.

Order Continuing Time for Sentence.

Now, at this time, came R. F. Roth, United States Attorney and Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys in behalf of the Government; came also the defendant in the custody of the United States Marshal with his attorney Bion A. Dodge, and this being the time heretofore fixed

for the pronouncement of judgment and sentence upon the defendant herein,

Now, upon the Court's own motion, it is ordered that the time for pronouncing judgment and sentence upon the defendant herein be and the same hereby is continued to 10 o'clock A. M. Saturday, April 8th, 1916.

CHARLES E. BUNNELL,
District Judge. [76]

[Title.]

Judgment.

Now, at this time, to wit, April 8th, one thousand nine hundred and sixteen, the same being one of the regular February, 1916, term days of this court, this cause came on regularly for the pronouncement of judgment and sentence of this court upon the defendant, W. H. Wooldridge. The defendant appeared personally and by his attorneys, Bion A. Dodge and Thomas A. Marquam, and the plaintiff, the United States of America appeared by its District Attorney, R. F. Roth and Assistant District Attorney, Reed W. Heilig.

It appears to the Court and the Court so finds that the defendant was duly and regularly indicted by a regular and lawful Grand Jury for the Fourth Judicial Division, Territory of Alaska, for the regular February, 1916, term of this court, upon the 18th day of February, 1916, in Count I of said indictment of the crime of rape, alleged therein to have been committed upon the 23d day of December, 1914, at Fair-

banks, Alaska, upon one Laura Herington, a female child of the age of thirteen years, he the said Wooldridge being then and there over the age of twenty-one years; in Count II of said indictment of the crime of attempt to commit rape, alleged therein to have been committed on the 14th day of February, 1916, in the Town of Fairbanks, Fairbanks Precinct, Territory of Alaska, upon one Laura Herrington, a female child of the age of fourteen years, he, the said W. H. Wooldridge, being then and there over the age of twenty-one years. [77]

It further appears to the Court that the defendant was duly and regularly arraigned upon said indictment and upon the 23d day of February, 1916, duly and regularly plead not guilty thereto, and upon the 6th day of March, 1916, the same having been duly and regularly appointed as the trial day for this cause, he appeared in court with his attorneys aforesaid, and upon the 6th, 7th, 8th, 9th, 10th, 11th, 13th, and 14th days of March, 1916, a jury of twelve men were duly and regularly impaneled and sworn, evidence introduced upon behalf of plaintiff and defendant, arguments of counsel had, and the jury duly instructed by the Court, as to the law in the case. That upon the 14th day of March, 1916, said jury retired to consider their verdict and upon the same day returned their verdict, which was and is as follows: “[Title.]

Verdict.

We, the jury in the above-entitled action, duly impaneled and sworn, do find the defendant not guilty of the crime of rape charged in count I of the indict-

ment, and do find the defendant guilty of the crime of attempt to commit rape charged in count II of the indictment.

Fairbanks, Alaska, March 14, 1916.

L. J. HEACOCK,

Foreman.”

That thereafter, defendant filed motions in arrest of judgment and for a new trial, which were, upon the 30th day of March, 1916, duly and regularly overruled and now upon this 8th day of April, 1916, the same having been heretofore regularly designated as the day for the pronouncement of the judgment and sentence and defendant and his counsel having been asked if there was any reason why judgment should not be pronounced, and the Court being fully advised upon the subject.

IT IS ADJUDGED that the defendant, W. H. Wooldridge, is not guilty of the crime of rape as charged in the Count I of said indictment, [78] but is guilty of the crime of attempt to commit rape, as charged in Count II of said indictment, and in accordance with the verdict of said jury, and it is the judgment and sentence of the Court that the said defendant by reason of the above, be confined in the United States penitentiary at McNeil's Island, County of Pierce, State of Washington, for a period of six years, and the United States Marshal is directed to deliver said defendant to said penitentiary for the execution of this sentence.

Dated at Fairbanks, Alaska, this 8th day of April, 1916.

CHARLES E. BUNNELL,

District Judge.

Entered in Court Journal No. 13, page 496.

[Endorsed]: No. 708. In the District Court of the United States for the Territory of Alaska. United States of America vs. W. H. Wooldridge. Judgment and Sentence. Filed in the District Court, Territory of Alaska, 4th Div. Apr. 8, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [79]

[Title.]

Bill of Exceptions.

BE IT REMEMBERED that this cause came on regularly for trial in the above-entitled court, at 10 o'clock A. M., March 6, 1916, Honorable Charles E. Bunnell, Judge of said court, presiding. United States Attorney R. F. Roth, and Assistant United States Attorney Reid W. Heilig, appearing as attorneys for the Government, and B. A. Dodge and Thomas A. Marquam, appeared as attorneys for defendant. Proceedings were regularly taken to impanel a jury; and during all recesses and continuances while the jury was being impaneled, the jurors in the box were kept in the charge of bailiffs sworn in that behalf. On Wednesday, March 8, 1916, a jury of twelve men having been duly impaneled, were duly sworn to try the case. The defendant was present in court during all the proceedings and taking of testimony at the trial; and the jury, after being

sworn to try the case, were kept together in charge of the bailiffs. After the swearing of the jury, an opening statement was made on behalf of the Government by R. F. Roth, and thereupon Mr. Thomas A. Marquam made an opening statement on behalf of the defendant, whereupon the following proceedings were had and testimony was taken: [80]

[Testimony of Laura Herrington, for Plaintiff.]

LAURA HERRINGTON, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name?

Mr. DODGE.—Wait a minute. Now, if the Court please, we object to the introduction of any testimony whatever under this indictment or the two counts thereof, for the reason that the purported facts set forth in the indictment in Count I do not constitute a public offense; that the facts set forth in Count II do not constitute a public offense.

(By order of the Court, the jury, after being admonished as usual not to talk about the case, etc., withdraw in charge of the bailiffs; the motion is argued; and at 25 min. past 12 M. the jury come into court, and the Court takes a recess until 2 P. M., and the jury, after being admonished as usual, withdraw in charge of the bailiffs. Court reconvenes at 2 P. M.; the jury, the defendant and his attorney and the District Attorney are present, and again, by order of the Court, the jury, after being admonished as usual, retire in custody of the bailiffs, and

(Testimony of Laura Herrington.)

the argument is resumed, and, having been concluded, the jury, at 3 P. M., come into court, and thereupon the Court overruled the objection, and defendant asks and is granted an exception to said ruling, and the trial is resumed.)

(By Mr. ROTH.)

Q. What is your name?

A. Laura Herrington.

Q. Where do you live? A. Fairbanks.

Q. Whereabouts in Fairbanks do you live? What street do you live on? A. Second Avenue, I think.

Q. What part, the upper or lower part of town?

A. Lower part.

Q. What is your father's name? [81]

A. George Herrington.

Q. Do you know where you were born?

A. In Circle City.

Q. How old are you? A. Fourteen.

Q. When is your birthday? A. 3d of August.

Q. How old will you be your next birthday?

A. Fifteen.

Q. Where were you living last Christmas a year ago? Where was your home then?

A. In Ester City.

Q. What was your father's business at that time?

A. He owned a saloon there.

Q. What is you mother's name?

A. Mrs. Herrington.

Q. Do you know her first name? A. Exina.

Q. Have you any sisters? A. Yes.

Q. Have you a sister younger than yourself?

(Testimony of Laura Herrington.)

A. Yes.

Q. What is her name? A. Lena.

Q. Have you a sister older than yourself?

A. Yes.

Q. What is her name? A. Louise Mary.

Q. Have you more than one older than yourself?

A. Yes. [82]

Q. What is the other's name?

A. Louise and Catherine.

Q. Where were you last Christmas a year ago?

A. I came into town.

Q. Who came into town with you?

A. Catherine.

Q. Your sister Catherine? A. Yes.

Q. Did anyone else come in with you?

A. Not that I remember of.

Q. Was anyone else in town during—that is, of your family while you were in here?

A. There might have been. I don't remember.

Q. Did your mother come to town at that time?

A. What do you mean?

Q. Did your mother come to town from Ester at the time that you were in here on that trip last Christmas a year ago?

A. Yes, a week before Christmas.

Q. She came in a week before Christmas, you say?

A. Yes, sir.

Q. How long did she stay here at that time, do you know? A. Until after New Years, I think.

Q. How long did you stay here?

A. I stayed as long as mama did.

(Testimony of Laura Herrington.)

Q. You went back with your mother? A. Yes.

Q. When did you come in, before Christmas?
How long were you in here before Christmas?

A. A week before Christmas. [83]

Q. Did you come in at the same time that your mother did? A. Yes.

Q. You came in at the same time, a week before Christmas, did you say? A. Yes.

Q. Do you know Mr. Wooldridge, the defendant here, the gentleman sitting beside Mr. Dodge there?

A. Yes, sir.

Q. How long have you known him Laura? Is it a long time? A. Yes.

Q. Did you see Mr. Wooldridge at the time that you were in here from Ester on that trip, the holidays, last Christmas a year ago, did you see Mr. Wooldridge? A. Yes.

Q. Now, with reference to Christmas day, when was it that you saw Mr. Wooldridge?

A. I don't understand.

Q. Was it before Christmas that you saw him, or after Christmas? A. Before.

Q. How long before, Laura?

A. Two or three days before.

Q. Where did you see him?

A. By the Glass Block.

Q. Do you know the name of the street? Whose store is the Glass Block? A. Gordon's.

Q. Was there anyone with you at the time you saw Mr. Wooldridge that time? A. No.

(Testimony of Laura Herrington.)

Q. Was there anyone with Mr. Wooldridge?

A. No. [84]

Q. Did Mr. Wooldridge talk to you? A. Yes.

Q. What did Wooldridge say to you?

A. He asked me to go for a walk with him.

Q. What did you say?

A. I said I didn't want to go.

Q. Then what did he say after that?

A. He asked me again.

Q. Then what did you say? A. I went.

Q. Did you tell him you would go? A. Yes.

Q. Did you go with him? A. Yes.

Q. Where did you go?

A. Up by the Eagle Hall way.

Q. How is that?

A. Up the Eagle Hall way.

Q. To what place did you go?

A. To the cabin by his house.

Q. Was there anybody else in the cabin?

A. No.

Q. Did you go into the cabin? A. Yes.

Q. Now, when you and Mr Wooldridge got into the cabin was there anyone else in the cabin that you know of besides you and Mr. Wooldridge?

A. No.

Q. What time of the evening was this, as nearly as you can fix the time? A. About seven-thirty.

[85]

Q. When you got into the cabin there, what did Mr. Wooldridge do,—what is the first thing that he did?

(Testimony of Laura Herrington.)

A. He laid his coat on the floor, on the ground, rather.

Q. On the ground. A. Yes.

Q. What kind of a coat did he have?

A. A fur coat.

Q. After he had laid the coat on the ground, what did you do? A. I laid on it.

Q. Did you unbutton any part of your clothes?

A. Yes.

Q. Did you unbutton your drawers?

(Defendant objects as leading and suggestive. Sustained.)

Q. What did you do, Laura, with reference to your drawers,—what did you do?

A. I unbuttoned them.

Q. Then what did Mr. Wooldridge do? Just speak up, Laura, and tell the jury what Mr. Wooldridge did. A. He laid on me.

The COURT.—What is the answer?

A. He laid on me.

Mr. ROTH.—Q. Well, when he laid on you, did he do anything to you? A. Yes.

Q. What did he do? (No answer.) Do you know what sexual intercourse means? (No answer.) State whether he had sexual intercourse with you.

(Defendant objects as leading and suggestive. Sustained.)

Q. State just what he did, Laura. (No answer.) Just state what he did.

The COURT.—Q. Do you understand Mr. Roth's question? [86] A. Yes.

(Testimony of Laura Herrington.)

Q. Answer the question. A. Yes.

Mr. ROTH.—Q. I ask you— The Court sustained that objection, Laura, and it is necessary for you to state what he did.

A. Well, I can't explain what he did.

Q. Do you mean that you are ashamed to explain it, or that you don't know how to explain it.

(Defendant objects as leading and suggestive. Overruled. Defendant asks and is given an exception.)

Q. What is it?

A. I said I was ashamed to, and I don't know how to explain it.

Q. Now, Laura, tell this jury—look at this jury and tell this jury whether or not Mr. Wooldridge at that time when he was laying on top of you in that cabin, as you have stated, had sexual intercourse with you?

(Defendant objects as irrelevant, incompetent, immaterial in the form it is put, because it is leading and suggestive.)

The COURT.—Laura. You may explain to the jury what happened there.

A. I can't explain.

Mr. ROTH.—Q. Do you know, Laura, what it means for a man to spend?

(Defendant objects as leading and suggestive, and, the term not having been used by this witness, it is entirely leading and suggestive. Objection sustained.)

Q. Laura, will you please—will you please tell this

(Testimony of Laura Herrington.)

jury what Mr. Wooldridge did when he was laying on top of you there?

A. I told you I can't explain.

Q. Because we are at a standstill now. Can't you tell this jury, whether you explain it or not—can't you tell the jury what he did when he lay on top of you? (No answer.) Won't you do that, Laura?

[87] A. I told you I can't.

Q. Tell this jury whether or not Mr. Wooldridge at that time inserted his penis into your body.

(Defendant objects as leading and suggestive, and putting the question (means answer) into the witness' mouth. The Court states it is leading, but overruled the objection. Defendant excepts and is allowed an exception.)

A. Yes.

Q. Did you say "Yes" or what? A. He did.

(Defendant moves to strike the answer, because it is gotten from the witness by a leading and suggestive question. Motion denied. Defendant asks and is given exception.)

Q. What, if anything—or did you see—Was there any stain on your clothes after that?

(Defendant objects as leading and suggestive. Objection sustained.)

Q. State, Laura, whether or not there was anything on your drawers after you left there.

A. I don't remember.

Q. Laura, state what, if anything, Mr. Wooldridge gave you at that time? A. Yes.

(Defendant objects as irrelevant, and immaterial,

(Testimony of Laura Herrington.)

the objection is overruled.)

Q. What did he give you? A. Two and a half.

Q. Did Mr. Wooldridge make you any further promise at that time?

(Defendant objects as irrelevant, incompetent and immaterial. Sustained.)

Q. Did Mr. Wooldridge say anything at that time to you when he gave you the two dollars and a half?

(Defendant objects as irrelevant, incompetent and immaterial. Objection overruled. Defendant asks and is given an exception.)

Q. Did you understand the question, Laura?

[88] A. What question?

Q. Did Mr. Wooldridge say anything to you at all at the time he gave you the two dollars and a half?

A. I told him two and a half wasn't enough.

Q. What did he say?

A. He would give me a dollar more.

Q. He said he would give you a dollar more. Where did you go from there?

A. Up to my aunty's.

Q. Who went with you? A. Wooldridge.

Q. How far did he go with you? A. Part way.

Q. Who was your aunty? A. Mrs. Morency.

Q. Where were you stopping at that particular time in town? A. At Mrs. Morency's.

Q. Are you acquainted with a man by the name of Ed Hall? A. Yes.

Q. Did you see him that night?

(Defendant objects as irrelevant, incompetent and

(Testimony of Laura Herrington.)

immaterial. Objection overruled. Defendant asks and is given an exception.)

A. Yes.

Q. Where? A. Aunty's.

Q. How long after you got there?

A. I don't remember.

Q. Did you have a talk with Mr. Hall at that time?

(Defendant objects as irrelevant, incompetent and immaterial. Objection overruled. Defendant excepts, and exception allowed.) [89]

A. Yes.

Q. Just tell this jury what you told Mr. Hall, if anything, about Mr. Wooldridge.

(Defendant objects as irrelevant, incompetent, immaterial, hearsay; no evidence when the conversation took place; no evidence to show it was in the nature of a confession; that the inference from the evidence is that it was an ordinary conversation that happened at some indefinite time after the alleged commission of the offense; for the further reason that it has not been shown this far that Ed Hall was the first person she saw or came in contact with after the commission of the alleged offense; for all these reasons defendant objects to it as irrelevant, incompetent and immaterial. Objection overruled. Defendant excepts and is given an exception.)

A. Well, I told him I was out that night with him.

Q. I didn't hear you?

A. I told him I was out that night with him.

Q. With who? A. Mr. Wooldridge.

(Testimony of Laura Herrington.)

(Defendant moves to strike answer for all the reasons already given, as it is now apparent that it is irrelevant, incompetent and immaterial. Motion denied. Defendant asks and is given an exception.)

Q. What else did you tell him, if anything?

A. I told him what he did.

Q. As you have related it here?

(Defendant objects as irrelevant, incompetent, immaterial, calling for a conclusion of the witness, leading and suggestive. Objection overruled. Defendant excepts and is allowed an exception.)

A. Yes.

Q. When did you—How soon after that did you see your sister Catherine?

A. I don't remember exactly.

Q. Well, I am not asking you about "exactly" Laura.

A. It might have been a day or so. I don't know.

Q. Where was your sister employed at that time, I mean, your sister Catherine, at that time? [90]

A. She was working for Mrs. Running.

Q. The first time that you saw your sister Catherine after this thing occurred, did you have a talk with her about this?

(Defendant objects as irrelevant, incompetent and immaterial. Objection overruled. Defendant excepts. Exception allowed.)

A. No.

Q. I don't know— Please read that question again. I want to see if she understood the question.

(Testimony of Laura Herrington.)

(Defendant objects to the re-reading of the question. Overruled. Question read as follows: "The first time that you saw your sister after this thing occurred, did you have a talk with her about this?")

Q. Did you understand the question? A. Yes.

Q. Did you have a talk with your—the first time you saw her, with your sister Catherine about Wooldridge, in the way you have related it about the money?

(Defendant objects as irrelevant, incompetent and immaterial. Objection overruled. Defendant excepts. Exception allowed.)

A. No.

Q. How is that? I don't understand what the witness says.

The COURT.—Q. What is the answer.

A. No.

Mr. ROTH.—Q. Did you ever have a talk with your sister Catherine about this affair that occurred between you and Mr. Wooldridge in that cabin?

(Defendant objects as irrelevant, incompetent and immaterial. Defendant excepts. Objection overruled. Exception allowed.)

Q. Answer that.

A. When I met her on my way—(interrupted).

Q. Where did you meet her?

A. She was going over to Running's.

Q. How long was that after you met Mr. Wooldridge, do you think, in the cabin out there? [91]

A. Two or three days. I don't remember.

Q. You don't remember exactly. A. No.

(Testimony of Laura Herrington.)

Q. What did you say to her at that time about Mr. Wooldridge, if anything?

(Defendant objects as incompetent, irrelevant, immaterial and hearsay. Overruled. Defendant excepts. Exception allowed.)

A. I forget what you said.

Q. What did you say to Catherine at that time about Mr. Wooldridge?

(Defendant further objects to it as asking for a self-serving declaration. Same ruling and exception.)

A. I showed her the money.

(Defendant objects and moves to strike the answer as not responsive, and as irrelevant, incompetent and immaterial. Objection overruled and motion denied. Defendant excepts and is allowed an exception.)

Q. What did you say to her when you showed the money, if anything?

A. I told her Mr. Wooldridge gave it to me.

(Defendant objects to the question and answer, and moves to strike the question and answer, as irrelevant, incompetent and immaterial. Objection overruled and motion denied. Defendant excepts, and is allowed an exception.)

Q. Did you see Mr. Wooldridge down at your house where you now live around about the 12th or 13th of last month upon the occasion of his coming to your house about potatoes?

(Defendant objects as incompetent, irrelevant, im-

(Testimony of Laura Herrington.)

material, leading and suggestive. Objection sustained.)

Q. Did you see Mr. Wooldridge at your house last month? A. Yes.

Q. Where were you when he first came into the house? A. Upstairs.

(Defendant objects as to indefinite. Sustained.)

Q. Where was Mr. Wooldridge when you saw him at your house last month? [92]

A. What do you mean?

Q. Where were you in the house when you saw Mr. Wooldridge? A. I was upstairs when he came.

Q. Did you come downstairs? A. Yes.

Q. Did you have a talk with Mr. Wooldridge?

A. Yes.

Q. What did Mr. Wooldridge say to you?

(Defendant objects to further questions until the time is fixed, and Mr. Roth states he will fix the exact date, not by this witness, but by other witnesses.)

A. He said I was growing.

Q. And then what did you say to him?

A. I don't remember what I said.

Q. What else was said then at that time that you remember, by either one of you?

A. He talked to mama then.

Q. Well, did you talk to him any more there?

A. Yes.

Q. What was said?

A. I talked about the dollar he owed me.

Q. What did he say?

A. He said that I said it was all right.

(Testimony of Laura Herrington.)

Q. Then what did he say?

A. Then I said, "Well, I need the dollar."

Q. All right. Then, what did he say when you said you needed the dollar?

A. I don't remember.

Q. Laura, upon this subject now—upon the subject of your former meeting with him, was there anything said on that subject?

A. We made arrangements to meet. [93]

Q. I know. But was there anything said on this subject; the time you met him up in that cabin? Did he make any reference to the former time, at that time?

(Defendant objects as irrelevant, incompetent and immaterial. Overruled. Defendant excepts, and is allowed an exception.)

A. Yes.

Q. What was it that he said there? A. Yes.

Q. What did he say to you? Give the exact language now. I want the exact language.

A. He said the cabin was torn town.

Q. What else did he say—the exact language?

(Defendant objects as assuming that there was anything else said. Sustained.)

Q. State anything else that was said there, Laura, and, if anything else was said, give the exact language of it; just what he said.

A. He said we could meet some other place.

Q. But upon the subject of the time that you had met before. I want all that was said upon the subject of the time that you had met in that cabin down

(Testimony of Laura Herrington.)

there before; with reference to what was done down there, I want the exact language of what he said, Laura.

(Defendant objects as an attempt to cross-examine his own witness. Overruled. Defendant excepts. Exception allowed.)

Q. Now, Laura, please give that full conversation.

A. Well, I told him—(interrupted).

(Defendant objects as assuming that there was something else said, and as assuming that what she has already said was not the full conversation. Overruled. Defendant excepts and is allowed an exception.) [94]

A. Well, he told me the cabin was torn down and we couldn't go there, but meet some place else, and I said it could be at my house.

Q. Now, upon the subject of the "piece" that you had there—(interrupted).

(Defendant objects as putting the question in such a leading and suggestive way, as putting the words in the mouth of the witness; and Mr. Roth withdraws the question.)

Q. I will change the question. Upon the subject of the former sexual intercourse that you had with him down at the cabin, did he say anything about that, on that subject?

(Defendant objects that the question is leading and suggestive, taken together with the question asked just before. Objection overruled. Defendant excepts and is allowed an exception.)

Q. Answer the question if you can remember it.

(Testimony of Laura Herrington.)

A. Well, I told you I said that we could meet at my house.

Q. You didn't understand the question.

The COURT.—Q. Was there anything else said?

A. He said he would come.

Mr. ROTH.—But on the subject of the sexual intercourse that you had had with him down at the other cabin, was there anything said?

(Defendant objects as leading and suggestive, already having been asked, and improperly put. Objection overruled. Defendant excepts. Exception allowed.)

A. If there was, I have forgotten.

Q. Well, you stated that he said that he would meet you at your home, did you? A. Yes.

Q. When? A. At seven-thirty.

Q. That same day? A. Yes. [95]

Q. Who did you tell about that, if anybody, immediately after you made that appointment?

A. My mother.

Q. Did you see Mr. Wooldridge again that same day, I mean before noon? A. Yes.

Q. How long after this time that you made the appointment with him was it that you saw him again at the house there?

(Defendant asks that the time of day be fixed when this conversation occurred.)

Q. What time was it that Mr. Wooldridge came to the house there that day, according to your best recollection? A. It was about ten o'clock.

Q. And then about how long after that was it that

(Testimony of Laura Herrington.)

he came back? A. Half an hour.

Q. Did you have a talk with him when he came back? A. No.

Q. Where did he go in the house when he came back? A. He didn't come in the house.

Q. Did he talk to anyone? A. Yes.

Q. Who did he talk to? A. My mother.

Q. Where did they talk? A. In the cache.

Q. Do you know whether or not they went upstairs? A. That was when he was there first.

Q. That was when he was there first. A. Yes.

Q. Do you know whether or not Mr. Wooldridge gave your mother [96] anything when he came back there in a half hour?

A. My mother told me—(interrupted).

DEFENDANT'S ATTORNEY.—Just a moment.

Q. I don't care what your mother told you. Did your mother give you anything? A. Yes.

Q. What did she give you? A. A dollar.

Q. Did you see Mr. Wooldridge again that same day or evening?

A. I saw him in the evening.

Q. Tell this jury whether or not, when you made the arrangement for that meeting with Mr. Wooldridge, any signal was arranged? A. Yes.

(Defendant objects as leading and suggestive. Overruled. Defendant excepts, and is allowed an exception.)

Q. Just state what signal was arranged.

A. He was to whistle.

Q. How many times, or was there anything said

(Testimony of Laura Herrington.)

about that? A. Twice.

Q. Whistle twice. Now, in the evening before seven-thirty o'clock did anybody come there before seven-thirty o'clock—anybody come to the house?

A. Yes.

Q. Who came? A. Marshal Miller.

Q. Who else? A. And Marshal Berg.

Q. Do you know of anybody else?

A. Not that I remember. [97]

Q. Tell this jury what, if anything, you were to do upon hearing that whistle—upon hearing that signal.

(Defendant objects as irrelevant, incompetent and immaterial.)

Q. I mean in response to the signal.

(Defendant objects for the reason that there has been no evidence that she was to do anything. Objection overruled. Defendant excepts. Exception allowed.)

A. I was to raise the curtain.

Q. State what you did do, if anything, when you heard the whistle.

A. I raised the curtain before I heard the whistle.

Q. How many times did you hear the whistle?

(Defendant objects as irrelevant, incompetent and immaterial, for the reason that there is no evidence about what whistle she heard, or whose whistle she heard, or anything about it; that is too indefinite and uncertain. Objection overruled. Defendant excepts. Exception allowed.)

A. (No answer.)

Q. How many times did you hear the whistle?

(Testimony of Laura Herrington.)

A. About twice.

Q. Twice. Did Mr. Wooldridge come in immediately after he whistled, or after the whistle? I wish to strike that out. Did Mr. Wooldridge come in immediately after you heard the whistle?

(Defendant objects as leading and suggestive. Overruled. Defendant asks and is allowed an exception.)

The COURT.—The question is: Did Mr. Wooldridge come in immediately after you heard the whistle. A. No.

Mr. ROTH.—Did he come in there at all that evening? A. Yes.

Q. What time did he come in?

A. Eight-thirty. [98]

Q. What time, if any, did the men who were in the house go out, that had been in there before?

A. About a quarter after eight.

Q. What was said between you and Mr. Wooldridge when he came in there at eight-thirty?

A. Well, he said he was afraid to come before that.

Q. Well, what else did he say?

A. He asked me for what he wanted.

Q. What did you say?

A. I told him he should have come at seven-thirty.

Q. What else was said then, if you remember?

A. I don't remember.

Q. State whether or not anyone came in there, or came to the door, while you were there with Mr. Wooldridge at that time.

A. Marshal Miller and Marshal Berg.

(Testimony of Laura Herrington.)

Q. What did Marshal Miller say to you when he came there? A. He asked if daddy was home.

Q. What did you say?

A. I told him to sit down.

Q. What did he say—Marshal Miller?

A. I didn't hear what he said.

Q. Did he go in? Did he stop at all?

A. He stood at the door.

Q. How long did he stand there?

A. A minute or two.

Q. And what did he do after he stood there a minute or two? A. He went out again.

Q. What was said between you and Mr. Wooldridge after Miller left there?

A. He went out right away. [99]

Q. What was said between you at the time?

A. I told him to get out.

Q. Did he say anything to you? Was there anything said about who this was that came there?

A. He said he didn't know.

Q. You told him to get out? A. Yes.

Q. Did he go? A. Yes.

Q. How long after Mr. Miller left was it that Mr. Wooldridge left? A. Right after they left.

Q. Did you see Mr. Miller again that night?

A. Yes.

Q. How long after Mr. Wooldridge left was it that you saw Mr. Miller again?

A. I don't remember now.

Q. Do you think it was as much as half an hour?

A. I don't know.

(Testimony of Laura Herrington.)

Q. After Mr. Miller left the second time, did you see Mr. Wooldridge again? A. Yes.

Q. How long was that, do you think, after Mr. Miller—Marshal Miller left the second time, that Mr. Wooldridge came back again?

A. A little while after.

Q. Did he come inside of the house? A. Yes.

Q. Did he sit down?

A. Well, he stood up awhile; then I begged him to sit down, so he did. [100]

Q. What was the conversation that took place there that time that he was there?

A. That I could meet him again.

Q. Just state what it was. What did he say?

A. He said he could get a key from Mr. Rose.

Q. Did he say what Mr. Rose? A. Yes.

Q. What did he say? A. The bicycle man.

Q. What did you say?

A. I told him I didn't like to go there.

Q. Then what did he say?

A. He said he couldn't come here again. He was afraid to.

Q. When he said that, what did you say, if anything? A. I said I would meet him there then.

Q. What time was fixed? A. Eight o'clock.

Q. Of what day? A. The next day.

Q. Eight o'clock in the morning or eight o'clock in the evening? A. In the evening.

Q. After you had made that arrangement and that was said, where did Mr. Wooldridge go? Did he leave the house? A. Yes.

(Testimony of Laura Herrington.)

Q. Do you know about what time it was he left?

A. No.

Q. Did you tell anybody about this appointment that you had made to meet Mr. Wooldridge at Rose's bicycle shop?

A. My daddy and mamma.

Q. When did you tell them? [101]

A. When they came home.

Q. That same evening? A. Yes.

Q. Did you go to Rose's bicycle store the next evening?

A. Yes.

Q. Who went with you, if anyone?

A. I went alone.

Q. Did anybody go with you part of the way?

A. My daddy.

Q. How far did he go with you?

A. To the First National Bank.

Q. What time did you get there?

A. I don't know.

Q. Were there any lights in there when you got there.

A. There was a light in the back room.

Q. Who was in there?

A. Mr. Rose and Mr. Wooldridge.

Q. Where was Mr. Rose when you went in there; what part of the room did he occupy?

A. The back room.

Q. All right, but where was he in the back room when you got in there?

A. Lying on the bed.

Q. Where was Mr. Wooldridge?

A. Sitting by him.

Q. What was said when you went in there?

A. I think Mr. Rose said, "Hello."

(Testimony of Laura Herrington.)

Q. All right. Now, what else *said* said? Tell everything that occurred while you were in there, Laura.

A. Then Mr. Wooldridge got up and he said he was going for a [102] walk, and Mr. Rose asked him if he was going to take me with him.

Q. What did Wooldridge say then?

A. He said, "No. I will leave Laura for you."

Q. What did Rose say?

A. He didn't say anything more, not that I remember of.

Q. State what occurred right after that?

A. He went out into the other room and stayed there a little while.

Q. Who?

A. Mr. Wooldridge, and then, a little while after, Mr. Rose got up and went out in the other room.

Q. Go ahead.

A. They whispered for awhile. Then Mr. Wooldridge came back and told me to turn out the light and stay there until they came back.

Q. Then what did he do?

A. Went out after I had turned the light out.

Q. Then he went out of the front door, did he?

(Defendant objects as leading.)

Q. Where did he go?

A. Went out to the other room.

Q. All right. Then what is the next thing that you know that occurred?

A. Mr. Rose came back and told me I had better go away for someone was watching me.

(Testimony of Laura Herrington.)

Q. Did you go out of there then? A. Yes.

Q. And where did you go?

A. I went into the other room. [103]

Q. And from there where did you go?

A. Stayed in that room because the marshals came in.

Q. All right. And from there, where did you go?

A. Came up to Marshal Miller's office.

Q. When you got to the marshal's office who was in there?

A. Marshal Miller and the rest of them.

Q. Who were the rest of them that you know of that were there? A. Marshal Miller and Hall—

Q. Frank Hall? A. Yes, Berg, and McMullen.

Q. Mr. Berg. Was Mr. Wooldridge there?

A. Yes.

Q. Was Mr. Miller there, Chief Deputy Miller?

A. Yes.

Q. Was Mr. Rose there at that time? A. Yes.

Mr. ROTH.—You may cross-examine.

(Here the Court takes a recess until 3:50 P. M. to-day, and the jury withdraw after being admonished as usual by the Court; and, after the recess, and at 3:50 P. M., the defendant and his attorneys and the district attorney and the jury are present, and the trial is resumed.)

LAURA HERRINGTON, on the stand, resumes her testimony.

Cross-examination.

(By Mr. MARQUAM.)

Q. Laura, you say you were born in Circle City?

A. Yes, sir.

(Testimony of Laura Herrington.)

Q. And do you remember when that was? I don't mean that you remember the incident yourself, but do you remember, from your family talking about it, when it was—what year it was that you were born?

A. I think in 1902. [104]

Q. Do you remember how long you lived in Circle City? A. No, sir, I don't.

Q. Do you remember when you first came over to Fairbanks? A. No.

Q. You don't know how old you were when you first came to Fairbanks? A. No.

Q. I presume you don't know how you came over, do you? A. I guess I came on a boat.

Q. You think you came on a boat? A. Yes.

Q. Your family had lived there up to that time, up at Circle City; your father and mother had lived there and you had lived with them?

A. Yes.

Q. And when you came over, you all came over together. A. I guess so.

Q. I suppose you have gone to school, have you not? A. Yes.

Q. Do you remember when you started in to school? A. No.

Q. Do you remember how long you have been going to school? A. No.

Q. Are you going to school now? A. No.

Q. How long since you have been going to school?

A. I stopped this year.

Q. After you started in? [105]

A. After Catherine started for Tofty I stopped.

(Testimony of Laura Herrington.)

Q. How long ago was that? A. I don't know.

Q. Well, was it right recently?

A. Right lately. Yes.

Q. Within a month, or about that time?

A. Yes, about that time.

Q. Did you stop of your own accord, or were you taken out of school?

A. Mamma was sick, so I had to stop.

Q. Up until that time, after you started in to school you continued to go up until something in the neighborhood of a month ago.

A. Well, I went for a few days, and then I stopped again.

Q. What I mean is, have you been regularly to the public school here after you once started in; every year since you started in, have you been going to school?

A. Yes, only one year, that is when we lived out on Ester.

Q. You didn't go to school then? Was there a school at Ester? A. No.

Q. You didn't go to school there? A. No.

Q. You say that you have known Mr. Wooldridge a long time. What do you mean, Laura, by "a long time"? A. Many years.

Q. How old were you when you first knew him?

A. I don't know.

Q. As long as you can remember anything can you remember of knowing Mr. Wooldridge?

A. I went to school with Catherine when he was the school teacher. [106]

(Testimony of Laura Herrington.)

Q. And since that time you have known him?

A. He might have known me before.

Q. But at least since that time. Now, this incident that you were telling the jury about when Mr. Roth was questioning you, about meeting Wooldridge near the Glass Block was when? What year was that? A. In 1913. I think that was it.

Q. In 1913? A. I am not sure.

Q. What makes you think it was 1913?

A. I say: I wasn't sure.

Q. You think that is it, don't you?

A. Yes. I think it.

Q. What makes you think that? Why do you fix 1913 as the year? A. I don't know.

Q. It might have been some other year?

A. No.

Q. Then, it must have been 1913?

A. It must have been.

Q. It must have been? Have you any way by which you arrive at that conclusion and remember that it was 1913? You know what year this is?

A. Yes.

Q. This is what? A. 1916.

Q. And you think that you are quite sure that it was 1913 that this meeting with Mr. Wooldridge occurred? A. Yes.

Q. How long before that had it been that you had seen Mr. Wooldridge? [107]

A. How long before?

Q. Yes. Before the time that you met him near the Glass Block?

(Testimony of Laura Herrington.)

A. I don't believe I saw him before that.

Q. You must have seen him some time before that?

A. Oh. We just came in from Ester then.

Q. I understand, Laura, but I mean before that, whether it was a year or two years or three years, or whatever time it might have been; how long before the time you saw him near the Glass Block was it that you had seen him previous?

A. I don't remember.

Q. Have you no idea? A. No.

Q. It might have been a month.

A. I don't know.

Q. How long had you been out to Ester?

A. A year.

Q. And had you ever been in from Ester to town here during that time? A. Yes.

Q. Were you there a full year?

A. Yes. One whole year.

Q. A full year, and I presume you came in often, did you not? A. Yes.

Q. During any of those trips that you came into town, did you see him?

A. Not that I remember of.

Q. So then it must have been, if that is the case, a year or more since you had seen Mr. Wooldridge. Is that true?

A. It must have been. I don't remember. [108]

Q. You said you didn't know what street this was on, in answer to Mr. Roth's question. Don't you know street the Glass Block is on? A. Cushman.

(Testimony of Laura Herrington.)

Q. You knew that, didn't you?

A. Well, I think I said it, didn't I?

Q. I understood you to say you didn't know what street it was on? A. No. I said it.

Q. You know perfectly well that the Glass Block is on Cushman Street? You know most of the streets in town, don't you? A. No, sir. I don't.

Q. Well, a good many of them. You know Cushman Street, don't you? A. Yes. I know that.

Q. Where do you live? A. On Second.

Q. And what? A. That is all I know.

Q. Is that where you are living now, on Second Street? A. Yes.

Q. Which part of town?

A. The lower part.

Q. Near what place, that we might all know, if you don't know the street?

A. Do you know where Samson's live?

Q. No. A. Then I can't tell you.

Q. Do you know the Orr barn?

A. Yes. I know that. [109]

Q. Is it anywhere near there?

A. The Orr barn is below our place.

Q. How far below? A. I don't know.

Q. You have been down there?

A. I have been past there.

Q. Couldn't you give the jury some idea about where your home is?

A. I told you it was on Second.

Q. Second is quite long, a long street. How far this side of the Orr barn do you live?

(Testimony of Laura Herrington.)

A. I don't know.

Q. What place or building that is well known on Front Street down below there would be opposite your place? A. I didn't look to see.

Q. I know you didn't look especially for the purpose, but you have been down to the river from your house a good many times to Front Street?

A. No. I have been on Front Street.

Q. Don't you know, if you go down Front Street on your way home, what place you have to turn up away from the river to get to your house?

A. Yes. I know that.

Q. What places are on the corner where you turn around to go up? A. I don't know.

Q. Do you have to go beyond the Times office before you turn up, in order to go up to your place?

A. I don't take that street to go home.

Q. If you went down Front Street, were going down Front Street [110] until you got opposite to the house, would you turn up before you got to the Times office or would you go beyond the Times office?

A. I wouldn't go that way. I always pass the courthouse.

Q. I don't mean that. I am trying to find out and let this jury know where this house is that you have been telling about, and you have told us it is on Second Street and somewhere down in the lower part of town, and we want to know more definitely, if you can give its location, where it is.

A. Do you know where Snowey's live?

(Testimony of Laura Herrington.)

Q. No. I don't. But we all know where the Times office is.

A. I know you do, but we don't live around there.

Q. Is it further down than the Times?

A. Yes.

Q. About how far? A. I didn't measure.

Q. Don't you know how many streets it is?

A. I don't remember. I didn't count them.

Q. That is as near as you can give us to a description of the location of your home? How long have you lived in that house, Laura?

A. We have lived there quite a while.

Q. Have you ever lived in any other house in the town? A. Yes.

Q. Where was that?

A. Down on Wendell Avenue.

Q. That was a long time ago?

A. That was when we moved in from Ester.

[111]

Q. When did you move in from Ester; what year? A. I don't remember.

Q. Was it in 1914? A. 1915, I think.

Q. 1915 you moved in from Ester? You were in for the holidays, were you, the time you came in from Ester? A. Do you mean the carnival?

Q. No. I mean the Christmas holidays.

A. Yes.

Q. That is what you came in for? A. Yes.

Q. Your home was in Ester at that time?

A. Yes, sir.

Q. Where did you stop when you came in to town?

(Testimony of Laura Herrington.)

A. My aunty's?

Q. Who was your aunty? A. Mrs. Morency.

Q. You and your mother and your sister stayed there? A. Yes.

Q. Did your father come in?

A. Yes. I think he came in.

Q. Did he stay there too? A. No.

Q. Where did he stay? A. I don't know.

Q. Just the three of you stayed there? A. Yes.

Q. And you came in either the 22d or the 23d, I understood you to say? [112]

A. I never said that.

Q. What did you say?

A. I never mentioned no date.

Q. What date was it? I thought you said it was about a week before Christmas, wasn't it?

A. Yes.

Q. When your mother came in and you came in with her; and the date you met Wooldridge was either the 22d or the 23d? A. I don't know.

Q. And it was about seven-thirty o'clock in the evening? A. About that.

Q. And what were you doing there at that time?

A. I was just going up to aunty's.

Q. From where? A. I don't know.

Q. You had been down town? A. Yes.

Q. And you were going home? A. Yes.

Q. Where was Mr. Wooldridge; was he standing there, or walking, when he met you?

A. He was just coming up from the Glass Block, coming up that street.

(Testimony of Laura Herrington.)

Q. He was going up to the Glass Block?

A. Coming up this way. (Motions with her hand.)

Q. Away from the river or towards the river?

A. Out this way (indicating).

Q. Was he coming down town or going away from town? A. He was going up Cushman.

Q. And you were going up Cushman too? [113]

A. Yes. I was going that way.

Q. So then, did you overtake him or did he overtake you? A. He stopped me.

Q. Was he ahead of you while you were walking up, or behind you? A. He was ahead of me.

Q. He saw you and waited for you?

A. He saw me and he stopped.

Q. And waited for you? Was it dark?

A. Yes.

Q. How dark? A. I don't know.

Q. I understood you couldn't tell exactly. But how dark was it? A. Dark enough.

Q. Were the street lights on, burning? A. Yes.

Q. Was the moon shining?

A. I don't know. I didn't look.

Q. What did he say to you first?

A. He asked me to go out for a walk with him.

Q. Did he say what he wanted of you to go out walking with him? A. He didn't mention it then.

Q. He didn't say? Did you ask him what he wanted? A. Not that I remember.

Q. You might have? A. I don't know.

Q. Did you know what he wanted?

(Testimony of Laura Herrington.)

A Yes. I knew what he wanted. [114]

Q. Yes. A. Yes.

Q. How did you know, if he didn't say, or you didn't ask him? A. I knew it.

Q. How did you know, Laura?

A. Well, I knew. That is all.

Q. You just knew? A. Yes.

Q. You knew what he was after; and you knew that and understood that all right, did you?

A. Yes.

Q. You knew all about such things at that time, did you?

A. I don't know. I might have known some things.

Q. How is that?

A. I might have known some things.

Q. So when you said; yes, you would go with him, you knew what you were going for, wherever you were going?

A. Yes. I knew what I was going for.

Q. How were you dressed? A. I don't know.

Q. Don't you have any idea how you were dressed?

A. I had a dress on. I know that.

Q. Oh, yes; sure. But just describe to the jury generally how you were dressed.

A. I don't remember what dress I had on.

Q. Well, did you have anything on besides a dress?

A. A coat and hat.

Q. What kind of a coat and what kind of a hat?

A. I don't remember what coat I had on then.

Q. What did you wear on your feet? [115]

(Testimony of Laura Herrington.)

A. Shoes.

Q. Just leather shoes? A. Arctics.

Q. Overshoes? A. Yes.

Q. What did you have under the overshoes?

A. Shoes.

Q. Did you have leather shoes under the arctics?

A. Yes. I guess you should know that.

Q. We are trying to find out what you remember about this, Laura. Did you have a warm overcoat on?

A. I don't know whether it was warm or not, but it should keep me warm.

Q. It should keep you warm. Is that what you said? A. Yes. That is what I said.

Q. Did you have a hat on or a cap on?

A. A cap.

Q. What kind of a cap? A. Blue.

Q. What color? What material?

A. I don't know. I didn't look.

Q. Can't you give us some idea how you were dressed in that respect?

A. I said it was a blue cap.

Q. Well, it was a knit cap, was it, is that the idea?

A. I don't know.

Q. How was Wooldridge dressed?

A. I didn't notice. I know he had a fur coat on.

Q. What kind of a fur coat?

A. I don't know what kind of skin it was. [116]

Q. What did it look like?

A. It looked like a coat.

Q. What kind of fur? A. I don't know.

(Testimony of Laura Herrington.)

Q. Fur on the outside of the coat or on the inside?

A. I guess you should know that.

Q. Well, that is not material, what I know; it is the question of what you know.

A. Your coat has fur outside too, has it not?

Q. Do you know that? A. Yes. I know that.

Q. Do you know whether it has fur on the inside?

A. I don't know. I never looked.

Q. Then you don't know whether Wooldridge had an ordinary fur coat with the fur on the outside, or whether it was fur-lined?

A. It was fur on the outside.

Q. What kind of a cap did he have on?

A. A fur cap.

Q. Do you remember what kind that was?

A. I know it was a fur cap.

Q. After leaving the Glass Block, where did you go? A. Up towards the Eagle Hall.

Q. After you got to the Eagle Hall, then which way did you go? A. We went up his way.

Q. Which way is that? A. Where he lives.

Q. What street did you go up? You continued going on up the street that the Eagle Hall is on?

[117]

A. We turned the corner.

Q. Which corner? A. I don't know.

Q. Which corner do you mean, Laura?

A. I don't know the streets.

Q. From Eagle Hall, do you mean the corner this side of the Eagle Hall or the other side of Eagle Hall?

A. That side (pointing).

(Testimony of Laura Herrington.)

Q. On the other side. That would be up towards Lacey Street.

A. The way he lives. It might be Lacey. I don't know.

Q. Do you know where he lives.

A. Yes. I know where his house is.

Q. Where was this cabin from his house?

A. On the other side.

Q. Going which way?

A. Going that way (pointing).

Q. Going south, it was on the right-hand side of his house, was it? A. On the right-hand side.

Q. How far from his house? A. Not far.

Q. About how far? A. I don't know.

Q. Did you at that time know where his house was? A. No.

Q. You found out since? A. I found out since.

Q. After you found out since where his house was, where was this cabin?

A. On the right-hand side of his house. [118]

Q. On the right-hand side of his house. Well, facing his house from the street? A. No.

Q. The street that you went out to this cabin,—whichever street it was, if you don't know the name of it—was his house on the left or right-hand side of it? A. On the right-hand side.

Q. Going out to it?

A. His house was standing there, and the cabin was over here (indicating).

Q. Across the street?

A. I didn't say across the street.

(Testimony of Laura Herrington.)

Q. That is what I am trying to get at.

A. I am telling you it is on this side (indicating).

Q. This is the house? A. Yes.

Q. Which side of the street is Wooldridge's house on, on the right or left-hand side of the street, going out away from town? You know which your right hand is. A. I can't explain to you.

Q. You know which your right hand is, and which your left hand is.

A. I guess—of course I know that.

Q. Why, certainly. Was it on the right-hand side of the street or the left-hand side of the street, going out where this house of Wooldridge was?

A. On the right hand. His house is on the right-hand side.

Q. Going away from town?

A. I don't know. I didn't notice these things.

Q. You know where it is? [119]

A. I know where the house is.

Q. And it is still standing in the same place where it used to stand?

A. I guess it is. I don't know. I didn't stop to look.

Q. Let me ask you this question: If you were down town and were going out to Wooldridge's house, out this street that his house is on, when you get out to where the house was, would it be on the right-hand side of the street going out there or on the left-hand side of the street going out?

A. I told you I couldn't explain that.

Q. You said it was on the right-hand side of the

(Testimony of Laura Herrington.)

street, but I wanted to be sure you understood. I was directing your attention to the right-hand side going out. You cannot explain it any clearer than that. A. No. I can't.

Q. Was this cabin that you have talked about on the same block as his house? A. Yes.

Q. Are there any houses between it? A. No.

Q. No houses between it; and how close to his house was this cabin?

A. I told you I couldn't say.

Q. Give the jury some idea. A. I don't know.

Q. Do you know how far one hundred feet is?

A. No.

Q. Do you know about how far it is?

A. I said I didn't know.

Q. Well, is it as far from his cabin as the corner of the [120] First National Bank here down to the corner of that block?

A. It might be. I didn't notice.

Q. As a matter of fact, is it a greater or less distance from his house?

A. I didn't notice, so I can't tell you.

Q. You have no idea? A. No.

Q. Describe to the jury what kind of a cabin it was. A. It was a log cabin.

Q. Had you ever been in there before? A. No.

Q. Have you ever been in there since? A. No.

Q. Were there any street lights there so that you could see? A. No.

Q. Could you see? A. Yes. I could see.

Q. Moonlight, was it? A. I didn't notice.

(Testimony of Laura Herrington.)

Q. See pretty well? A. Yes.

Q. Could you see when you got inside the cabin?

A. No.

Q. Perfectly dark? A. Yes.

Q. Was it cold? A. Yes.

Q. How cold was it? A. I don't know.

Q. Well, about how cold? [121]

A. I don't know.

Q. Do you know how cold it was upon the 22d and 23d days of December, 1913?

A. No. It was cold enough.

Q. Were you cold? A. No.

Q. Did you feel cold? A. No.

Q. Was there any door in the cabin? A. No.

Q. He opened the door, did he?

A. I think the door was part ways open.

Q. Any windows in the cabin? A. No.

Q. No windows in the cabin? A. No.

Q. Any place for windows? A. Yes.

Q. Any stove in there?

A. I couldn't see. It was dark.

Q. Any furniture in there? A. I couldn't say.

Q. Could you see anything inside of the cabin?

A. No.

Q. Did you and he carry on any conversation while you were going from the Glass Block or near the Glass Block to this cabin?

A. We might have. I don't remember.

Q. Was there anything said about the purpose for which you were going?

A. No. Not that I remember of.

(Testimony of Laura Herrington.)

Q. Not a word. Just walked along.

A. We might have talked, but not on that.

Q. Not on that? A. No. [122]

Q. Now, in going to this cabin, did you go by his house, or was the cabin—did you reach the cabin before you got to his house?

A. I think we took another road.

Q. Just which way did you go, Laura?

A. I think we took in where the wireless is, took that road.

Q. How did you get on that road? A. Walked.

Q. I understand. But which way did you go? Which street did you take to get on the road leading to the wireless?

A. We went by the Eagle Hall, and then I have forgot which *was* we took.

Q. Did you know when you started to walk with him where you were going?

A. No. I had no idea where he was going to take me.

Q. Did you ask him where you were going?

A. Yes. He said he knew a little cabin by his house.

Q. Then did you go, after you got up and turned the corner near the Eagle Hall, did you keep on going in a straight line, or did you turn around some corner and change streets, before you got there?

A. We surely must have turned a corner if we went on that road.

Q. Where did you go?

A. I said I didn't remember.

(Testimony of Laura Herrington.)

Q. You don't remember. Were there any lights in his house at that time?

A. Yes. I saw a light there.

Q. After you came away from the cabin, which way did you go? Which road did you take? [123]

A. I don't remember.

Q. Do you remember anything about it?

A. We might have come the same way, but I don't remember.

Q. How long were you in the cabin?

A. I don't know.

Q. Did you get cold while you were there?

A. I don't remember.

Q. And he gave you two dollars and a half, you say. A. Yes. That is what I said.

Q. And you told him that was not enough.

A. Yes.

Q. Did you count it? A. Yes. I counted it.

Q. How did you count it?

A. The same as you count your money.

Q. Just tell me how that would be.

A. I don't see why you shouldn't know.

Q. You just tell me anyway whether you could see it or not. A. I can't tell you.

Q. You don't know how you counted it.

A. Well, I counted it.

Q. Just tell me how you counted it, can't you?

A. I said I can't tell you, and I am not.

Q. You can't tell me and you are not going to tell me. A. Yes. I had to look at it.

Q. I thought it was dark in the cabin?

(Testimony of Laura Herrington.)

A. I can get out of the cabin, can't I?

Q. I don't know whether you could or not. I understood you to [124] say that right then and there when he gave you the two dollars and a half you said it was not enough. So you must have known how much it was. Now, what are the facts in regard to that, Laura? What are the facts? Do you know how you came to determine that you had gotten two dollars and a half? A. He gave me it.

Q. How did you determine that?

A. What do you mean?

Q. Did you get outside of the cabin?

A. Of course.

Q. How far outside of the cabin did you get before you counted it? A. Oh, on to the road.

Q. How is that? A. I went on to the road.

Q. Which road? The wireless?

A. The house wasn't by the wireless.

Q. I mean the road or street leading to the wireless. That is known as a road, the rest of them are known as streets. Now what do you mean you were on a road?

A. The road was by his house, wasn't it?

Q. That is what I have been trying to find out from you. The minute you got out on to the road, it was light enough to see, wasn't it?

A. It was light enough.

Q. It was light enough so that you could see, without determining it in any other way, that you had two dollars and a half, and you told him it was not enough. A. Yes.

(Testimony of Laura Herrington.)

Q. Why did you tell him that? [125]

A. I wanted more, I guess.

Q. Did you think you were entitled to more?

A. I don't know.

Q. I want to find out from you why you made that remark to him. What is that?

A. I didn't say anything.

Q. Tell us why you didn't think it was enough.

A. I don't know.

Q. You don't know? A. No.

Q. Did you have any idea how much you ought to get according to your idea? A. Three and a half.

Q. Where did you get that idea?

A. I don't know.

Q. Who told you about what you ought to get?

A. I don't see why you should know that.

Q. Did somebody tell you that? A. Yes.

Q. Had you ever got that amount before?

(Plaintiff objects as irrelevant, incompetent and immaterial. Sustained. Defendant excepts and is allowed an exception.)

Q. But you did know, or at least you felt very strongly that you had not got enough, and you told him so. Is that right? A. Yes.

Q. Did you ask him before you went into the cabin what he was going to give you? A. No.

Q. After you came out you found out what he gave you, and then said it was not enough. Is that it?

A. I guess that is it. [126]

Q. I don't want you to guess, but I want you to tell what the facts are exactly. And you claim that you

(Testimony of Laura Herrington.)

never got that dollar that you were entitled to get.

A. I told him he needn't give it to me.

Q. Until right here lately. Is that what you want the jury to understand? A. Yes.

Q. Right here lately? A. Yes.

Q. When was that, about?

A. That was the morning he came to the house.

Q. Did you ever ask him for it in the meantime?

A. I didn't see him to ask him.

Q. You never saw him to ask him. A. No.

Q. From the time that you were up at the cabin, either the 22d or 23d day of December, 1913, up until say within the last month, you never saw him to ask him for this dollar. Is that right?

A. Well, I might have seen him on the street, but I never spoke to him.

Q. You have never spoken to him since?

A. No.

Q. Never had an opportunity, Laura, to ask him for this dollar until just recently. That is true, is it? A. Well, what do you mean?

Q. I mean—I am trying to find out why you didn't collect this dollar before. Was it because you had no opportunity to do so?

A. Well, I told you I told him it would be all right. [127]

Q. But did you ever ask him for it again before you asked him for it up in this house within the last month? A. No.

Q. What I am getting at: Did you even have an opportunity to ask him?

(Testimony of Laura Herrington.)

A. If I did, I didn't ask him.

Q. You never asked him. But you don't remember of any opportunity you had of asking him?

A. No.

Q. So, you went right directly from there to Morency's house, did you?

A. Yes. He walked a ways with me.

Q. How far did he walk with you?

A. I don't know.

Q. Well, about how far?

A. It wasn't very far from aunty's place.

Q. He walked pretty near to aunty's place with you. Is that true? A. Yes.

Q. This is how far? A. I don't know.

Q. What did he walk with you for down there? Do you know? Did he say?

A. I believe I asked him to. I am not sure.

Q. Did he walk pretty near down to aunty's place, and then he left you and you left him? A. Yes.

Q. Did you meet any people on the street, see any people?

A. We saw a man coming from afar, and he told me to hurry because he knew him. [128]

Q. Who told you to hurry because *you* (probably means *he*) knew him? A. Wooldridge.

Q. And you hurried? A. Yes.

Q. You didn't say anything to this man about it.

A. He was not near enough to talk to.

Q. How close was he? A. I said he was far.

Q. You could see him. You could have halloed to him?

(Testimony of Laura Herrington.)

A. I might have halloed. But I didn't do that.

Q. You didn't want to do that. A. No.

Q. Did you see anybody else along the street on your way down to your aunty's place, even at a distance? A. No.

Q. Just this one man.

A. Just this one man. Yes.

Q. Who did you first see when you went into your aunty's place? A. The children and my mother.

Q. Your mother was there. A. Yes.

Q. Did you say anything to your mother about it?

A. No.

Q. You didn't say anything to any of the children about it? A. No.

Q. You didn't say anything. A. No.

Q. Did you talk to Ed Hall? [129]

A. Yes. I did.

Q. How long after you went into the house did you talk with him? A. I don't know.

Q. About how long? A. I couldn't tell you.

Q. Well, give us some idea. A. I don't know.

Q. Half an hour?

A. It might have been. I don't know.

Q. It might have been longer than half an hour.

A. I don't think so.

Q. About a half an hour.

A. I couldn't say that.

Q. About how long? A. I said I didn't know.

Q. Give us some idea?

A. I have got no idea to give you.

Q. Not a bit in the world. A. No.

(Testimony of Laura Herrington.)

Q. It might have been more than a half an hour.

A. I know it was not more than half an hour.

Q. That is the limit, is it, that you want to place on it, from the time you went into the cabin, before you said anything to Ed Hall? Was he in the room with the rest of the people?

A. He came there after I came.

Q. You had an opportunity of talking with your mother and with the children and anybody else that was in the house, before Ed Hall came?

A. Yes. [130]

Q. And you didn't do it. A. No.

Q. Where did you tell him, or talk to him? In the house? A. Yes.

Q. Were the rest of them present. A. No.

Q. Were they in the room when you told him?

A. No.

Q. Where were you? A. In the bedroom.

Q. What was Ed doing in the bedroom?

A. I called him in there.

Q. You called him in there. A. Yes.

Q. Did you motion to him or call him in?

A. I called him.

Q. Didn't you, when you got inside, motion with your finger?

A. I didn't have to look at him when I called him.

Q. He will come without your looking at him, will he? What do you mean by that?

A. I said I called him.

Q. Now, the next person that you talked to about this was your sister Catherine, I understood you to

(Testimony of Laura Herrington.)

say. A. I showed her the two and a half.

Q. That is the same two and a half. A. Yes.

Q. That you had gotten before Christmas.

A. That Mr. Wooldridge gave me.

Q. On the 23d day of December. [131]

A. That is the money Mr. Wooldridge gave me.

Q. That is the same two and a half, is it?

A. Yes.

Q. How long after you got it from Wooldridge was it that you showed it to Catherine?

A. Two or three days.

Q. Did you keep two dollars and a half two or three days without spending any of it?

A. I could keep it.

Q. You did keep it? A. Yes.

Q. Well, then, it must have been after Christmas that you showed this to Catherine, wasn't it?

A. I don't know. It was not after Christmas. I don't know.

Q. It was after Christmas Day, was it?

A. I don't know. I didn't stop to think.

Q. You never stopped to think, you say. Is that what you said? A. Yes, that is what I said.

Q. You said it was two or three days, and it was either the 22d or 23d that you got the money. So it would be, according to that, if you are correct in that estimate, it would be the 24th or 25th of December that you saw Catherine, wouldn't it?

A. I guess so.

Q. Did you have any other money with you, or have any money at all, before you met Wooldridge?

(Testimony of Laura Herrington.)

A. I only had the two and a half.

Q. You didn't have any money when you saw Wooldridge. A. No.

Q. And this two and a half you kept without spending a cent of [132] it for probably two days.

A. That is what I said.

Q. And had the same identical two and a half, the same pieces of money, were they? A. Yes.

Q. And you showed them to Catherine. A. Yes.

Q. And as near as you can tell us about the facts of it, it was on the 22d, it would be the 23d—it would be the 24th or 25th of December.

A. I don't know. It was two or three days after.

Q. Two or three days after you were up at the cabin with Wooldridge. A. Yes.

Q. Whereabouts were you when you showed this two and a half to her?

A. She was going up to Running's house.

Q. Working there, was she? A. Yes.

Q. Did you go up there with her?

A. No. I was walking that way.

Q. How did you happen to show Catherine this money? A. I don't remember how it came about.

Q. You don't remember. Did you tell her where you got it?

A. Yes. I told her I got it from Mr. Wooldridge.

Q. Did you tell her, or did she ask you, how you came to get that from Mr. Wooldridge?

A. I told her Mr. Wooldridge gave it to me.

Q. What I mean is: Did you explain to her—ex-

(Testimony of Laura Herrington.)

plain to her how it came that he gave you this two and a half? [133]

A. No. I didn't explain it.

Q. Did she ask you? A. No.

Q. She said nothing to you in the way of an inquiry. A. Not that I remember.

Q. She didn't ask you why Wooldridge was giving you this two and a half.

A. She might have, but I don't remember.

Q. You don't remember. A. No.

Q. Did you have mittens on when you were up there at the cabin? A. No.

Q. Bare hands? A. Yes.

Q. You didn't wear any mittens. A. No.

Q. Did you have a moon? A. No.

Q. You don't know how cold it was.

A. I told you before I didn't.

Q. That might have been 1914, might it not?

A. No. I said 1913.

Q. You are quite sure it was 1913.

A. I am not sure.

Q. If you are not sure then, it might have been 1914, so far as you know, might it not? A. No.

Q. What? You say—(interrupted).

A. That is what I said.

Q. It couldn't possibly have been 1914. Is that what you want [134] us to understand?

A. I don't know.

Q. You don't know. Who else did you tell about it besides—or say anything, mention the matter at all, besides Ed Hall, and then show this two and a

(Testimony of Laura Herrington.)

half to your sister Catherine?

A. I think I told Grace Carey.

Q. And who else?

A. No one else that I remember of.

Q. Did you tell any of your folks?

A. No. I would be ashamed to tell them anything like this.

Q. Weren't you ashamed to tell your sister?

A. No. I am not ashamed to tell her this.

Q. Not ashamed to tell Grace Carey this.

A. No. She is the same kind of a girl as I am, so I don't see why I should be ashamed.

Q. She is the same kind of a girl that you are.

A. Yes.

Q. When did you tell your mother with reference to it, Laura?

A. I didn't tell my mother about this.

Q. You never did?

A. Well, I told her afterwards, after Mr. Wooldridge made the arrangement with me.

Q. You told her then. A. Yes.

Q. How did you happen to tell her after that time?

A. I told her about the arrangement.

Q. What arrangement do you refer to?

A. The arrangement we made to meet.

Q. Who got you to make those arrangements.

A. Mr. Wooldridge did. [135]

Q. Who? A. Mr. Wooldridge.

Q. Mr. Wooldridge did?

A. He made the arrangement himself.

(Testimony of Laura Herrington.)

Q. Who got you to make those arrangements, if anybody?

A. Marshal Miller told me if Mr. Wooldridge wanted to make any arrangements, to make them, and for me to tell my daddy.

Q. That is George Herrington. A. Yes.

Q. What did he tell you that he wanted you to do that for?

A. Wanted to see if I was telling the truth about Mr. Wooldridge.

Q. Where was Miller when he told you that?

A. I was up to Mr. Roth's office.

Q. Mr. Roth didn't say anything to you about it.

A. No. He has got nothing to do about those arrangements.

Q. Who had nothing to do about those.

A. Mr. Roth?

Q. You mean with you directly.

A. Yes, with me.

Q. But Mr. Miller was up to Mr. Roth's office when he first spoke to you about making these arrangements. A. Yes. He was up there in the office.

Q. When was that?

A. I think it was the first night when I went up there.

Q. When was that with reference to the night you say Wooldridge actually came to your place, how long before or after?

A. It might have been on the 10th.

Q. What date was it, Laura, that Wooldridge first came to your house?

(Testimony of Laura Herrington.)

A. I don't know. I didn't keep track of it. [136]

Q. What was it that might have been on the 10th?
What was it that you meant happened on the 10th?

A. I was up to Mr. Roth's office on that date.

Q. The 10th of what, of February? A. Yes.

Q. Now, how long was that before Wooldridge came to your house? A. How long before?

Q. Yes.

A. I think when we talked about it up there, it was the next day.

Q. Talked about it where?

A. At Mr. Roth's office.

Q. What was the next day?

A. It would have been the 11th.

Q. When you were in Roth's office it was on the 11th, you say? A. No. It was on the 10th.

Q. It was on the 10th that you talked first with Mr. Miller in Roth's office? A. Yes.

Q. Then what was it that happened on the 11th?

A. Mr. Wooldridge came down to the house on the 11th.

Q. What did he do when he came down there on the 11th then? A. Oh, about the potatoes.

Q. Is that it? A. Yes.

Q. That is the first time he had been there that you had seen him, was it? A. Yes.

Q. When had you last seen Wooldridge before he came down to the house there about these potatoes, Laura, to talk with him?

A. The last time I saw him. [137]

Q. Before he went there about these potatoes, how

(Testimony of Laura Herrington.)

long before that had you seen him last?

A. I didn't see him before that.

Q. You didn't see him before that. A. No.

Q. You hadn't seen him for how long; a year?

A. He came out on Ester once.

Q. I mean in town. How long was it from the time on Ester that he was out there, several months?

A. I don't know.

Q. Was it during the summer time?

A. That I saw him—(interrupted).

Q. Yes. You have been in from Ester how long now? A. I have been in here—(interrupted).

Q. About.

A. I don't know. I can't keep dates.

Q. About how long? About a year?

A. I don't know.

Q. You have kept some dates, haven't you?

A. I don't know.

Q. Well, give us some idea of how long you have been in town since you left Ester Creek. Has it been about a year or more than a year?

A. Just about a year.

Q. And it was during the time you were out at Ester—it would be more than a year ago that you last saw Mr. Wooldridge, before you saw him at the house about these potatoes. Is that true?

A. I didn't listen to your question. [138]

Q. I will ask you again. From the time that you saw him at the house, the first time prior to that time, it would have been a year that you had seen Mr. Wooldridge. Isn't that true, Laura? Can you

(Testimony of Laura Herrington.)

recollect? Tell the jury about how long it had been.
I don't care accurately. A. I don't know.

Q. Would you say it had been about a year?

A. I said I didn't know.

Q. Would it be six months, Laura. Can't you give us an idea? A. I refuse to answer that.

Q. Why? A. Just because I refuse.

Q. Why do you refuse? Isn't it a proper question, don't you consider?

(Plaintiff objects on the ground that she has answered that she didn't know. Objection sustained. Defendant excepts. Exception allowed.)

Q. Well, then, let's get back to this time that you talked with Miller. I understood you, and I want to see if this is true and correct: As near as you could remember you were up to Roth's office on the 11th or on the 10th, and Miller was there. Is that true?

A. Yes.

Q. That was on the 10th of February. Then upon the 11th of February Wooldridge came to the house in some connection about some potatoes, asking about—something to do with—something about potatoes. Is that true? A. Yes.

Q. You are sure of that, are you? So that when Wooldridge first came there, on the 11th, you had already talked to Mr. Roth and Marshal Erwin—or Marshal Miller in Roth's office [139] about some dates you were going to have with Wooldridge. Is that true?

A. I told you once that Mr. Miller said if I could get—(cries).

(Testimony of Laura Herrington.)

Q. If you could what? If you could get Mr. Wooldridge to make a date with you, to do it. Is that what you said, Laura? Don't cry; just answer the question. Was that true?

A. I told you before.

Mr. ROTH.—Answer the question, Laura?

Mr. MARQUAM.—I understood you—I may have misunderstood you, but I understood you to say that they told you if you could make a date with Mr. Wooldridge to do it.

A. That is what Mr. Miller said.

Q. That is what Mr. Miller said to you? So, that was what you proceeded to do, was it? A. Yes.

Q. How did you go at it to do it?

A. I asked him about the dollar.

Q. Just tell this jury the first thing you said to Mr. Wooldridge when you saw him there, and just exactly how it came about. Did you think by asking him for the dollar, or for a dollar, however you expressed it, that you could get him to make a date with you?

A. Yes. Every time he sees me he tries to.

Q. Every time he sees you he tries to? Now, after making that statement, can you tell this jury how long it had been before this time that you had seen Wooldridge?

(Plaintiff objects as witness has heretofore stated that she couldn't fix any time at all.)

The COURT.—Q. Laura, do you remember when you had seen Mr. [140] Wooldridge the first time before you saw him down at the house? Do you re-

(Testimony of Laura Herrington.)

member how long ago it had been since you had seen him, a month ago?

A. Before he came down to the house?

Q. Yes. The first time before he came down to the house? I thought maybe you would understand it that way, or would you understand it if I said: The last time before he came down to the house; had you seen him a month before, or two months before, or had it been a long, long time?

A. It was a long, long time before I saw him.

Q. You don't remember now? A. No.

Q. You don't remember whether it was in the summer-time or in the winter-time?

A. This was winter when he came down this last time.

Q. But did you see him last summer?

A. Yes. He came out to Ester once.

Q. Was that last summer or a year ago?

A. When we were living on Ester.

Q. He came to Ester when you were living there?

A. Yes.

Mr. MARQUAM.—Q. Laura, do I understand that you hadn't seen him since you came in from Ester until this time to talk with him?

A. Yes, to talk with him.

Q. And you moved in from Ester—your folks moved in from Ester some time along in July, did they not? A. No. Not in July.

Q. Wasn't it some time last July? [141]

A. No. I don't think it was.

Q. When do you think it was?

(Testimony of Laura Herrington.)

A. It was in the fall, I think, somewhere along in August.

Q. This last fall, do you mean? You mean the last August, the August that has just passed, do you; not a year ago? Can you answer that?

A. No. I can't answer that.

Q. Who had talked to you before Mr. Miller had talked to you in the marshal's office?

A. I talked to Mr. Roth. Mr. Miller was present.

Q. You talked to Mr. Roth? A. Yes.

Q. Was that also upon the 10th? A. Yes.

Q. You talked with Mr. Roth first, and then afterwards with Mr. Miller.

A. They both talked to me.

Q. That was the first time they had ever talked to you? A. Yes.

Q. Had anybody else ever talked to you; had your father ever talked to you about this date that you were to make?

A. Well, I told daddy when I made the date with Mr. Wooldridge.

Q. Was that after you talked with Mr. Roth and Mr. Miller, or before? A. After.

Q. But the first talk that you had with anybody about making a date with Wooldridge was with Mr. Roth and Mr. Miller?

A. No. Mr. Roth had nothing to do with that.

Q. You had not talked with him about that at all. When this [142] conversation with you and Mr. Miller occurred, was Mr. Roth in the room?

A. Yes.

(Testimony of Laura Herrington.)

Q. He heard everything that was said?

A. Yes.

Q. And what time of day was that?

Q. This was night.

Q. The night of the 10th? A. Yes.

Q. What did Wooldridge have to say that you heard about any potatoes when he was down at the house? A. I was upstairs.

Q. Did you hear?

A. I heard him say something about potatoes and daddy, and that is all I heard.

Q. That was when?

A. When he came to the house.

Q. That was on the 11th?

A. It must have been.

Q. It was the next day, anyway, after you had talked with Mr. Miller, was it?

A. No. He came before that.

Q. Oh, he did? Before what? (Discussion between Mr. Marquam and the Court as to what "before what" and "before that" relates.)

Q. What did you mean by that, Laura? What were you trying to tell me when you said you saw him "before that"? A. I don't know myself.

Q. You don't know yourself? Was your mother home at that time that you were upstairs? [143]

A. I told you before, she was.

Q. You told Mr. Roth that? A. You heard it.

Q. All right. A. You were sitting there.

Mr. ROTH.—Just answer the questions, Laura.

Mr. MARQUAM.—Q. She was downstairs and

(Testimony of Laura Herrington.)

you were upstairs, and you heard some talk, did you, between Mr. Wooldridge and your mother?

A. Yes.

Q. What was that talk?

A. I told you I just heard a few things.

Q. What were they?

A. About potatoes and daddy.

Q. You didn't come downstairs then?

A. I did come downstairs.

Q. You did come downstairs? A. Yes. I did.

Q. Then, after you came downstairs did you hear any conversation between your mother and Wooldridge? A. Then my mother went upstairs.

Q. Now, when Wooldridge first came into the house, give this jury a correct statement of everything that you heard Wooldridge say to your mother, or your mother say to Wooldridge.

A. When mamma went upstairs then I talked to him.

Q. Before she went upstairs what was said between them?

A. He said I was growing, and I don't remember what he said to mamma. I didn't pay any attention.

[144]

Q. You heard what was said, but you don't remember it? A. No. I don't.

Q. But you heard it? You were in a position so you could hear it? A. Of course I was.

Q. What purpose had you in coming down at that particular time? A. I came down to see him.

Q. In order to make this date with him that Mr.

(Testimony of Laura Herrington.)

Miller had asked you to make? A. Yes.

Q. And you say you succeeded in making this date? A. Yes.

Q. You were the first one that suggested it?

A. I don't remember.

Q. Naturally, if you had that in mind and it was your object in accomplishing it, you were the first one that spoke about it.

A. I asked him about the dollar, and he said: "We didn't have a good piece the last time," and then he said, "We could have another one," and I said, "Yes."

Q. So, he was very susceptible to your suggestion that you meet again, was he?

The COURT.—Q. Do you understand what he means by "susceptible"?

Mr. MARQUAM.—Q. You were perfectly willing and anxious, in order to carry out this agreement with Miller, to make a date with him? A. Yes.

Q. So, what did you tell him?

A. I said I would.

Q. You said you would, not intending to, did you?

A. No, I didn't intend to. [145]

Q. You were just encouraging him to get him to come to your house there, or some place else, so that Miller would catch him?

A. He was more anxious than I was.

Q. Well, possibly. But you were making that date and making that arrangement for the purpose of catching him, were not you?

A. He set the trap himself for himself.

(Testimony of Laura Herrington.)

Q. What trap?

A. It seems like it was a trap. I guess you could see that. You know very well.

Q. So, you were playing part of that trap game yourself? A. Well?

Q. Where did you get that word "trap"? Who told you anything about a trap, Laura?

A. I said it myself.

Q. Did anybody connected with this case, Mr. Miller or the district attorney use that word in describing what they wanted done?

A. No, sir. They didn't.

Q. That is just out of your own mind?

A. Yes. It is.

Q. So you say he made the trap himself, instead of you and the marshal?

A. He was perfectly willing.

Q. I am not asking you about him being perfectly willing. You are trying to tell now that Wooldridge was laying the trap himself?

A. Yes. Miller said that if he wanted to make a date with me, for me to make it.

Q. Asked you to do it [146]

A. Well, I guess that must be.

Q. So, in response to Mr. Miller's request you proceeded to suggest the matter to him about making a date with him? Is that the idea? Is that true? That in order to do that, the way it occurred to you, the best way to do was to ask him for that dollar? Is that right? A. Yes.

Q. So, he was to meet you when?

(Testimony of Laura Herrington.)

A. At seven-thirty at my house.

Q. Did you know that he was coming down to the house there on a potato deal with your father?

A. No, sir. I did not.

Q. You never heard a word about that? A. No.

Q. Your father didn't tell you that Wooldridge had spoken to him on the street about some potatoes, and he would be down to the house?

A. He might have told my mother.

Q. He didn't tell you? A. No.

Q. Did you tell Miller or Roth that Wooldridge was expected down to your house there to sell some potatoes or bring some potatoes down?

A. I told them afterwards.

Q. You didn't tell them before?

A. No. How could I know before?

Q. You might have done it?

A. I don't see how I could have known before?

Q. Didn't your mother say something about it, or your father? [147]

A. My father talked to my mother.

Q. He knew about it? Don't you know, Laura, that your father and your mother knew and had discussed the probability of Wooldridge coming down there about these potatoes that he was going to let them have? A. I don't know nothing of the kind.

Q. You never heard anything about it?

A. No.

Q. Who did you first—did George Herrington, your father, before the time that you—that Wooldridge came down to your house and you asked him

(Testimony of Laura Herrington.)

for the dollar, had he said anything about this trap that was to be laid by you? A. No.

Q. He had not said a word? A. No.

Q. The first person that ever mentioned it was Miller, was it? A. He didn't mention "trap."

Q. All right. If you don't want to use that word. Did your father say anything about making a date with Wooldridge?

A. He told me if I could make a date to make it, which I did.

Q. Your father told you that? A. Yes.

Q. Did he tell you that before Miller told you that, or after? A. I guess he told it afterwards.

Q. And it was along the same lines that Miller had talked to you, was it; about the same request that your father made that Miller had made to you?

A. Yes.

Q. So, at that particular time did you succeed in making a date with Wooldridge? [148]

A. I made the date with him when he came down to the house.

Q. How is that?

A. I made the date with him when he came down to the house.

Q. You made the date to come down to the house right then?

A. When he came down to the house I made the date.

Q. While your mother was upstairs? A. Yes.

Q. Didn't she go upstairs for the purpose of be-

(Testimony of Laura Herrington.)

ing absent, so you would have clear sailing with him there? A. Yes.

Q. You knew what she was going upstairs for?

A. Yes.

Q. You had talked that over before? A. Yes.

Q. And you had suggested to her, or she had told you, that she would get out of the way so you could fix up this proposition, did she?

A. She went upstairs. That is all I know.

Q. With an understanding with you, did she not? You understood what she was going upstairs for?

A. We never knew Wooldridge was going to come. Mamma was surprised when he came to the door.

Q. Answer my question. After he did get there, your mother went upstairs through an understanding with you, and you knew what she was getting out of the way for?

A. I knew what she was getting out of the way for.

Q. And she knew why she was going upstairs?

A. Yes. She knew it.

Q. Who did you tell, after you claim to have made this arrangement? [149]

A. I told my—(interrupted).

Q. (Continuing.) With Wooldridge? Who did you tell about it first? A. My daddy.

Q. Was your daddy upstairs too?

A. When he came home that night.

Q. What did you tell him, Laura?

A. I told him about the arrangement I made with Wooldridge.

(Testimony of Laura Herrington.)

Q. What did he say?

A. I suppose he told Miller.

Q. I don't want any suppositions. Just what did he say to you? A. I don't remember.

Q. Did he say that was fine, or that was all right, we will get him? A. He laughed.

Q. He laughed about it?

A. Yes. He laughed, I suppose.

Q. That was fine; that was a joke with him?

A. I don't know.

Q. He laughed, anyway. What else did he do or say? What else did he do at that time, or say?

A. I told you I don't remember.

Q. You don't remember. Was there anybody else there when you told him? A. No, sir.

Q. Did he say what you should do then?

A. No. He said he would tell.

Q. He said he would tell who?

A. Miller. [150]

Q. And did he leave you to go down and tell Miller about it? A. No. He didn't.

Q. When did he leave?

A. He went the next morning, I guess.

Q. Do you know? A. I know he told me.

Q. What time in the evening was it that you told your father, when he laughed about it?

A. I don't know. I didn't look to see.

Q. Well, about what time? Was it about supper time? A. Yes. It was,

Q. Was it very late, or immediately or shortly after supper? A. Daddy always gets home late.

(Testimony of Laura Herrington.)

Q. You mean when he gets home to stay for the night? A. Yes, sir.

Q. Was it on one of these occasions? Was this the time he went home for the night, or was he home for supper? A. He came home for the night.

Q. And he stayed; he didn't go down town that night again after you told him? A. No.

Q. Isn't it a fact that you told him earlier in the evening, and he left then, and then came back later and then stayed for the night? A. No.

Q. You are sure of that? A. I am sure of that.

Mr. ROTH.—We object, as counsel is talking about one happening and the witness is talking about another. They are at cross purposes. [151]

Mr. MARQUAM.—It may be.

Q. You told your father about this?

A. I said I did.

Q. What time was it that you told him with reference to the time that you had talked to Wooldridge?

A. I didn't listen to that question.

Q. You know when you talked with Wooldridge and made this date with him? A. Yes. I do.

Q. What time of day was that?

A. That was in the morning.

Q. All right. Now, the same evening, you told your father about it, I understood you to say.

A. Yes.

Q. Didn't he come home for lunch at noon?

A. He comes home sometimes at noon.

Q. On this particular date do you remember whether he came home for lunch?

(Testimony of Laura Herrington.)

A. I don't remember whether he did or not.

Q. Did he come home for supper?

A. Not that I remember of. Sometimes he stays away all day.

Q. I mean on this particular occasion?

A. I said I don't remember.

Q. At any rate, you didn't see him to talk to him, and didn't talk with him about this until late that same night. Is that true? A. Yes.

Q. That is what I understood you to say before. And then he said he would tell Miller about it. Is that true? A. Yes. [152]

Q. All right. You say that you know that he did tell Miller. How do you know that?

A. Well, he said he was going to tell Miller.

Q. Do you believe everything that your father has told you along that line?

The COURT.—You need not answer that question.

(Defendant excepts and is allowed an exception.)

Mr. MARQUAM.—Q. Is that the only reason you have for suspecting or knowing that George Herrington, your father, told Miller, because he said he was going to? A. Yes.

Q. Now, who came to the house there to make arrangements for this trap—I am going to use that term because you used it. You understand what I mean? Who came there to make the detail arrangement for that?

A. Marshal Miller and Marshal Berg.

Q. When did they come?

(Testimony of Laura Herrington.)

A. It was before half-past seven.

Q. What date; the next day?

A. It was when I made arrangements to meet him. I believe we met that same night.

Q. The same night as what?

A. As he was supposed to come to the house.

Q. That was the same night, was it, that you first—that he first came there to you to talk to you, or at least came there to talk about potatoes? Is that true, Laura? Let me put it in another way and see if we can get this straightened out. Take a certain date, a certain morning about 10 [153] o'clock. I understood you to say on your direct examination he came there, and then is the time you talked with him and made this appointment with him.

A. Made the appointment with him. Yes.

Q. Did you make that appointment for that same night or the next night? A. For the same night.

Q. Then, isn't it true that you must have told your father about it before late that night, if you were to have that appointment that night and these arrangements were to be made? After realizing that, don't you think, as a matter of fact, that you must have told your father during some time that he was home for lunch or in the evening at supper time, or some time during the day, about this appointment? Do you see what I am asking you about?

A. Yes. I see.

Q. What is the fact? Is that true, that sometime shortly after you had made this date, that you told your father? Isn't that true? What do you think

(Testimony of Laura Herrington.)

about that? What is your recollection now? It must have been, mustn't it, that you talked with him sometime—(interrupted).

A. I remember of telling daddy that night.

Q. Late that night?

A. It was that night that I told him.

Q. Then, the date that you had must have been the next night, wasn't it, because you told him before this date was due, didn't you? What about that? You didn't tell him after the date was passed. That is true, isn't it? A. No.

Q. Certainly, you told him. The first time you would see him, [154] after making this date, you would tell him about it, wouldn't you? A. Yes.

Q. Don't you think that happened probably sometime during that day? A. I don't remember.

Q. But you are quite sure that the date was for the same night that you saw Wooldridge first in the morning. You are sure about that, are you?

A. I am not so sure.

Q. Well, then, what I want to get at, if I can from you, whether it was that you had made the date for that same night or the next night?

A. It was for the same night, I think.

Q. We will take that as settled then. So that evening at the time you were to meet Wooldridge, who was the first person that came there?

A. The first person that came there?

Q. Outside of your own family.

A. There was Marshal Berg and Marshal Miller.

Q. And that was about what time?

(Testimony of Laura Herrington.)

A. It was before half-past seven.

Q. Before half-past seven. What did they do? What did they come there for? Did they ask you about this? A. Daddy told them, I guess.

Q. What? A. Daddy told them.

Q. He told them. A. Yes, probably.

Q. Then what did they say to you when they came there? [155]

A. They would wait until Mr. Wooldridge came.

Q. I didn't catch that.

A. They were going to wait until Mr. Wooldridge came.

Q. That they would? A. Yes. They did.

Q. They waited until Wooldridge came, and where were they? A. Upstairs.

Q. How long did they stay upstairs?

A. They left the house at fifteen minutes after eight.

Q. At fifteen minutes after eight they left the house—Miller and Berg, you say.

A. Yes, and two others with them.

Q. How long after they left did they come back again?

A. They came there first and they fixed something up on the wall.

Q. Fixed something up on the wall.

A. Yes. I don't know what you call it. Then they went away again, and he told me that marshal—(interrupted).

Q. Before you get going too fast, I want to know what this thing they fixed up on the wall was.

(Testimony of Laura Herrington.)

A. I said I didn't know.

Q. What did it look like? A. I don't know.

Q. You know what it looked like.

A. Something you put to your ear. I know that.

Q. What did they say that was for?

A. They didn't tell me what it was for.

Q. Just tell us, Laura. You saw it. You were there at the time.

A. Yes. I was there at the time. [156]

Q. Tell us what it looked like and describe it?

A. I didn't notice. I just saw them put a bell up in the roof; then they took that thing down and put this inside of the bell.

Q. What do you mean by a bell, a paper bell?

A. Yes.

Q. That was hanging up on the roof?

A. Yes, and they put that up there.

Q. And they put this thing in the bell, and hung it up again, and what did they do?

A. The bell was always hanging there, so they only had to put this in the bell.

Q. What else did they do?

A. By this you could hear everything Wooldridge said.

Q. By this thing that they put in the bell. And where were they going to hear it?

A. They were upstairs.

Q. Did you see this thing that they put in the bell with your own eyes? A. Yes. I did.

Q. What did it look like and how large was it?

(Testimony of Laura Herrington.)

A. It was not very large.

Q. About how large? Show the jury.

A. I don't know.

Q. Show the jury what shape was it?

A. Round.

Q. How large around?

A. I don't know. [157]

Q. Give them some idea how big it was. Was it as big as the top of that pitcher? A. No.

Q. Was it as big around as that glass? You can see how large the top of that glass is. Was it that big? A. It might have been a little bigger.

Q. What color was it? A. Black.

Q. If it was as big around as that, how thick was it? A. I didn't take notice.

Q. Did you have it in your hand and look at it?

A. No.

Q. Did they show it to you? A. No.

Q. Did it have wires connected with it?

A. Yes. It had wires.

Q. Where did those wires go up?

A. I don't know. They had a box or something like that (indicating size).

Q. A big box. Where did they put that?

A. Upstairs.

Q. How was it they were going to use this? Did they explain to you? A. No.

Q. How do you know they could hear, then, through that anything that was said?

A. Daddy said they could.

(Testimony of Laura Herrington.)

Q. Your daddy was there when they were doing this? A. Yes. [158]

(The Court takes a recess until 8:00 P. M. this evening, and the jury, after being admonished, withdraw in charge of the bailiffs; and at 8:00 P. M. court reconvenes, and the defendant and his attorneys, and the district attorney, and the jury are present and trial resumed.)

LAURA HERRINGTON resumes her testimony on cross-examination.

(By Mr. MARQUAM.)

Q. Who was arranging that apparatus, Laura? Who was putting it up and fixing it?

A. Mr. Miller and Mr. Berg.

Q. What time of day or evening was that fixed up there and put up there?

A. It was before seven-thirty.

Q. Then, after they got it fixed up there, did they go upstairs and stay there?

A. No. They went away.

Q. And where did your father go? Did he go away too? A. I don't remember.

Q. He didn't stay there, did he?

A. I don't remember what time he went away, after they came in, or after these other men came in, or when Miller and Mr. Berg went away. I don't know.

Q. About that time he went away too? Did you say "Yes"? A. No. I didn't say anything.

Q. What do you say to that?

A. I said I didn't know.

(Testimony of Laura Herrington.)

Q. He went away within a few minutes, or within a short time after this apparatus was completed?

A. Yes, a short time after.

Q. Where was your mother?

A. She went away. [159]

Q. When did she go away?

A. When they were putting that thing up.

Q. Did anybody request her to go away?

A. Well, she said she couldn't stay there.

Q. She said she couldn't stay there. Who did she say that to? A. She told me that.

Q. Do you know whether anybody had requested her to go away? A. No.

Q. How many rooms have you in your house, Laura? A. Four.

Q. Four rooms, and this bell that you described to the jury was in the front room?

A. In the front room. Yes.

Q. And there is an upstairs where you can go up. What are upstairs, bedrooms?

A. Upstairs is a bedroom.

Q. What instructions did you get, if any, from the marshals as to what you were to do?

A. Talk loud.

Q. What did they tell you to say, or what did they tell you to talk about? A. This other time.

Q. Talk about this other time?

A. Yes, about when we met down in the cabin.

Q. Did you at any time talk about that?

A. Yes, when Wooldridge came up to the house.

Q. You were told to talk loud. You knew what

(Testimony of Laura Herrington.)

that was for, did you? A. Yes. [160]

Q. You knew that what you were to say would be heard, or supposed would be heard by somebody else, didn't you? A. Yes.

Q. And you knew that the purpose of it was to get some evidence against Mr. Wooldridge, didn't you? You understood that? A. I don't know.

Q. Didn't you know what the purpose of it was?

A. I know they were trying to find out whether I was telling the truth about Mr. Wooldridge.

Q. They didn't believe you. Is that the idea?

A. I don't know.

Q. Did they say they didn't believe you?

A. No. They didn't say that.

Q. They were trying to find out whether you were telling the truth about it.

A. Yes, sir.

Q. And they were going to find out through this machine? A. Yes.

Q. You said a while ago that Mr. Berg and some of the marshals were upstairs and were listening. What time did they go upstairs?

A. About seven-thirty.

Q. That was the time that you were to meet Wooldridge, was it? A. Yes.

Q. About seven-thirty. How long did they stay up there? A. I don't know.

Q. Quite a while? A. Yes.

Q. About how long?

A. I don't know. They left the house about fifteen minutes after eight. [161]

(Testimony of Laura Herrington.)

Q. They left the house about fifteen minutes after eight, and what did you do?

A. I stayed downstairs.

Q. Your mother was still away? A. Yes.

Q. And your father was still away? A. Yes.

Q. Well, what happened next there around the house? A. Waited for him.

Q. Waited for him. And how long did you wait?

A. Waited until eight-thirty.

Q. Anybody upstairs at that time?

A. Those men? No, not at eight-thirty.

Q. At eight-thirty they had gone? A. Yes.

Q. Mr. Berg and Mr. Miller?

A. No, Mr. Miller wasn't there.

Q. Just Mr. Berg, and who else?

A. Mr. Berg and Mr. Clark, and I don't know who the other fellow was.

Q. You don't know who the other fellow was?

A. No.

Q. Berg and Clark. What Clark is that?

A. That Clark over at the drugstore.

Q. Was he up there? A. Yes.

Q. Frank Clark over in the Red Cross Drugstore? A. Yes.

Q. What was he doing there?

A. I don't know. [162]

Q. How long was he there?

A. He stayed as long as the rest did, until fifteen minutes after eight.

Q. When did you first see him up there? When did he first come there?

(Testimony of Laura Herrington.)

A. When he first came to the house.

Q. I know, but at the time Mr. Berg came up there? A. The second time he came.

Q. And there was somebody else?

A. I don't know who the other one was.

Q. Did you see him?

A. No. I didn't get a good look at his face.

Q. You don't know who it was? A. No.

Q. Well, did they all go away together?

A. Yes.

Q. Not even one of them stayed up there?

A. Not after fifteen minutes after eight.

Q. Not after ten minutes after eight?

A. Fifteen minutes.

Q. Fifteen minutes after eight? Did anybody come back that evening and go upstairs again to this machine and listen through it? A. No, sir.

Q. Then after that, I understand you, some other marshals came up there?

A. That is when Mr. Wooldridge was sitting in there.

Q. Mr. Wooldridge came there at what time?

A. Eight-thirty.

Q. Knock on the door? [163] A. Yes.

Q. What did he say to you when you came to the door when he came there?

A. I asked him to come in.

Q. Didn't he ask you whether your father was there? A. Not that I remember of.

Q. Not that you remember of. Just be careful in your answers, and think, and see if he didn't ask

(Testimony of Laura Herrington.)

you whether your father was home, or was your father there, and that you told him he was upstairs.

A. No. I don't remember.

Q. You don't remember? You might have told him that?

A. Yes, I told him daddy was upstairs.

Q. Yes. I thought so. Was he upstairs?

A. No.

Q. What did you tell him that for?

A. I don't know.

Q. You don't know?

A. I was afraid of him, because I was alone.

Q. You were afraid of him?

A. Yes. I was alone.

Q. That was not the first time, according to your tell, that you were alone with Mr. Wooldridge?

A. I know that.

Q. You were afraid of him?

A. That is what I said.

Q. And you told him that your father was upstairs? A. Yes.

Q. You thought you would be safe with Mr. Wooldridge if you told [164] him that your father was upstairs? Is that the idea? A. Yes.

Q. What did you invite him in for, if you were afraid of him? A. I don't know.

Q. If you were afraid of a man and he would come and knock at the door, you wouldn't be apt to invite him in, would you? Why didn't you, instead of telling him your father was home, why didn't you say that he couldn't come in, and close the door?

(Testimony of Laura Herrington.)

Why didn't you do that, Laura?

A. I don't know.

Q. You don't know why you didn't? Well, after you invited him in, what did he say and what did you say? A. I told you I have forgotten.

Q. You have forgotten what he said? Didn't Mr. Wooldridge say to you after he went into the house that he wanted to see your father and he wished you would go upstairs and awaken him? You told him he was asleep, didn't you?

A. I told him daddy was upstairs.

Q. Didn't you tell him he was upstairs asleep, or lying down? A. I didn't say he was asleep.

Q. Didn't he say—ask you, after he had gone in, you played a record or two on the phonograph?

A. I played a record.

Q. You were entertaining him? A. No.

Q. Were you doing it for your own amusement?

A. I don't know.

Q. But you did play some record on the phonograph? A. Yes. I did. [165]

Q. After you had played about one record, and he had listened to it, didn't he tell you he wished you would go upstairs and tell your father that he was there to see him, wanted to see him?

A. No. He didn't.

Q. You are sure of that?

A. Of course I am sure of it.

Q. Why are you so sure about that particular thing, and you are not sure about other incidents happening about the same time?

(Testimony of Laura Herrington.)

A. I know he never asked it.

Q. And he thought all the time your father was upstairs?

A. He said he knew daddy was up town.

Q. He did? A. Yes.

Q. When did he tell you that?

A. When he was in there.

Q. He said that he knew your daddy was up town?

A. Yes.

Q. And he asked you then what you meant by telling him that your father was upstairs?

A. No.

Q. He didn't? Well, pretty soon some men came to the house and knocked at the door, when Mr. Wooldridge was there?

A. Marshal Berg and Marshal Miller came there.

Q. What did they do when they came there?

A. Asked for daddy.

Q. What did you tell them?

A. I told them to sit down. [166]

Q. Did they sit down? A. No.

Q. Did you tell—you knew who Mr. Miller was?

A. Yes. I knew who he was.

Q. And you knew who Mr. Berg was?

A. Yes. I knew.

Q. Did you tell them, when they came in, that you were afraid of Mr. Wooldridge?

A. No. I didn't.

Q. Why didn't you? A. I don't know.

Q. You were afraid of him? A. Yes.

Q. You didn't tell them anything about it?

(Testimony of Laura Herrington.)

A. No.

Q. You knew they would protect you, if you told them? A. Yes.

Q. And you didn't tell them anything about it?

A. No.

Q. The fact was, you were not afraid of Mr. Wooldridge? A. I was afraid of him.

Q. You told them to sit down, and what did they say? A. They went out.

Q. They went out right away? Did they come into the room?

A. Marshal Miller stood at the door.

Q. What did the other man do, Mr. Berg?

A. He stood behind Mr. Miller.

Q. Did they have their coat collars turned up?

A. I didn't notice. [167]

Q. Were they in a position so Mr. Wooldridge could see who they were?

A. I don't know. I didn't notice.

Q. You could see them plain enough to tell who they were? A. Yes.

Q. When you went to open the door, could you?

A. Yes.

Q. And where was Mr. Wooldridge? What was he doing?

A. He was sitting down in a rocking-chair.

Q. What part of the room was he with reference to the door that these men came and knocked at?

A. Sitting on this side (indicating).

Q. That is, to the right of the door as you enter the room? A. His back was to the door.

(Testimony of Laura Herrington.)

Q. How was he dressed? Did he have a fur coat on? A. Yes.

Q. Did he take his fur coat off when he came into the house? A. No.

Q. Did he have his hat in his hand?

A. I don't remember that.

Q. When he came in, when you invited him *him* and asked him to sit down, did you take his hat and lay it away, or did he hold it?

A. I don't remember that.

Q. He had his fur coat on? A. Yes.

Q. How long had he been in there from the time he came until these two men, Miller and Berg, came?

A. Not very long.

Q. About how long? [168] A. I don't know.

Q. What? A. I said; not very long.

Q. Well, what did Wooldridge do after these men left the door? A. I told him to get out.

Q. You told him to get out? A. Yes. I did.

Q. Did he go? A. Yes.

Q. What did you tell him to get out for?

A. I don't know.

Q. Give the jury some idea how many minutes he was there that time, if you can?

A. I said I didn't know.

Q. Did you know anything about him intending to bring some potatoes there to your place? Did you know anything about that; not necessarily from your own knowledge, but did you hear that?

A. I heard mamma and daddy talking about it.

Q. Just what did your mamma and daddy say

(Testimony of Laura Herrington.)

about it? What did they say, Laura; what did they say about potatoes? A. I don't know.

Q. Do you mean that you don't remember?

A. I don't remember.

Q. When did you hear them talking about it?

A. It might have been in the night or morning. I don't know.

Q. Just before this, or was it several days before?

A. I think it was that night. No, it couldn't have been.

Q. Before, wasn't it? [169]

A. It was before Mr. Wooldridge came that night.

Q. Was it after he had been there in the morning?

A. Yes. I think it was in the morning.

Q. After he had come to the house and inquired for George Herrington, and your mother said he would be there in the evening? Was it after that?

A. It might have been. I don't know.

Q. Might it not have been the day before that, the day before? A. No.

Q. You are sure of that. Give the jury some idea of what they said. A. I don't know.

Q. Were you present when they were talking?

A. No, not downstairs. I was upstairs.

Q. Were they talking downstairs? A. Yes.

Q. How is your house arranged and situated; so that a person upstairs can hear what is said downstairs? A. No. You can't hear very good.

Q. Well, you know they were discussing and talking about some potatoes? A. Yes.

Q. What was the situation there at your house

(Testimony of Laura Herrington.)

about your needing things to eat, potatoes and provisions?

(Plaintiff objects as irrelevant, incompetent and immaterial, except as to potatoes. Objection sustained. Defendant excepts. Exception allowed.)

Q. Well, you told Mr. Wooldridge to get out, and he got out? A. Yes.

Q. He came back a little while after that, didn't he? [170]

A. Yes. He said he followed those two men.

Q. How long after that did he come to the door again? A. Not very long.

Q. About how long? A. I don't know.

Q. What did he say to you when he came to the door and you opened it?

A. He told me he followed the men.

Q. Anything else?

A. He didn't know who they were.

Q. Didn't he ask you who they were?

A. I asked him who they were.

Q. Why did you ask him? You knew who they were, didn't you? A. Yes. Of course I did.

Q. What did you ask him for?

A. I don't know.

Q. How?

A. I wanted to see if he knew them.

Q. You told him they were a couple of men from the creeks, didn't you? A. No.

Q. What did you tell him?

A. I never told him that. He said he thought they were men from the creeks.

(Testimony of Laura Herrington.)

Q. Didn't you tell him they were a couple of men from the creeks?

A. I told him they might be, they might be some men from the creeks that owed daddy some money.

Q. And you knew who they were all the time?

A. Yes, I did. [171]

Q. And you were fooling him.

A. Yes, I was.

Q. You knew what you were there for, and knew you were supposed to be fooling him, so you were carrying out your instructions, were you?

A. Yes.

Q. Well, now was it at that particular time that he came to the door, or when he was there and you asked him to get out, that you told him he could bring the potatoes at any time?

A. I don't remember asking him that question.

Q. Not ask him, but say to him.

A. I don't remember of saying that.

Q. When you told him when he came there, as you say, about half-past eight, that your father was upstairs, what did he say right then?

A. He said he knew daddy wasn't upstairs.

Q. Did he ask you why you were saying that?

A. No.

Q. Did you tell him? A. No.

Q. Did you then, after he said he knew he was not upstairs—did you say that he was?

A. I never said anything.

Q. What was it you said this morning or this afternoon when Mr. Roth was questioning you, about

(Testimony of Laura Herrington.)

getting a dollar? What was it you said about that; that you got it from your mother, or from him, or who gave that dollar to you?

A. Mr. Wooldridge brought the dollar and gave it to my mother for me. [172]

Q. What did your mother say to you when she gave you that dollar?

A. She said: "Mr. Wooldridge told me to give this to you."

Q. Did she ask you what it was for? A. No.

Q. You didn't tell her? A. No.

Q. Don't you know, Laura, that when Mr. Wooldridge was there in the morning about ten o'clock, or in that neighborhood, and asked if George was there and wanted to know whether he wanted those potatoes, that your mother followed him out and closed the door and asked him to loan her a dollar; that you were hard up, had nothing to eat in the house, and asked him to loan her a dollar? Don't you know that to be a fact?

A. She never asked him that.

Q. She did not? A. No.

Q. How do you know?

A. Because I know it.

Q. Did you hear the conversation?

A. He gave her that dollar to give to me.

Q. Did you hear him?

A. No, I didn't, but I know mamma never asked him for that. He gave it to her himself.

Q. You know that that is not true. Were not you, as a matter of fact, without provisions and

(Testimony of Laura Herrington.)

things to eat in the house at that time?

(Plaintiff objects as irrelevant, incompetent and immaterial. Objection sustained. Defendant excepts. Exception allowed.) [173]

Q. When did your father come home and when did your mother come home that night?

A. I don't remember.

Q. Do you remember about when they came home, Laura?

A. Well, my mother was drinking that night, so I don't remember what time she came home.

Q. Would that have anything to do with your memory as to when she came home?

A. She always comes home so late when she is drinking.

Q. When did your father come home?

A. I didn't look at the time.

Q. Was he drinking? A. Yes.

Q. Had you retired, or gone to bed, Laura, when they came home?

A. I think I was waiting for some time.

Q. You think you were waiting. Did you tell your father what had occurred there? A. Yes.

Q. All the details? A. Yes.

Q. What did he say? A. I don't remember.

Q. Not a thing? You remember nothing about it, as to what you told him?

A. I told him about Wooldridge coming late.

Q. What did he say? A. He laughed.

Q. He laughed again. Did he tell you that you were to try and trap him again, or anything to that

(Testimony of Laura Herrington.)

effect? A. No. [174]

Q. He didn't. Did you tell him at this time about this alleged appointment that you had with Wool-dridge down some other place?

A. Yes. I told him about that.

Q. What did he say to that? Did he laugh again? What did he say, Laura, or do?

A. I don't remember.

Q. You remember nothing about what he said, or what he did. Did he say it was all right, or all wrong, or what did he say? A. I don't remember.

Q. Was that in the evening that you told him that?

A. Yes.

Q. Do you remember what time? A. No.

Q. You don't remember a thing that he said. Have you been talking with Mr. Roth since the adjournment of court this evening at half-past five?

A. What do you mean?

Q. Just exactly what I say. Have you been talking with Mr. Roth between the time we quit at half-past five—

The COURT.—Maybe she doesn't understand what "adjournment" means.

Mr. MARQUAM.—Since have-past five—You know when Court closed up and you went away—and the time you were on the witness-stand, have you been talking with Mr. Roth? A. No.

Q. Have you been talking with any of his assistants? A. No.

Q. Have you been talking with Mr. Miller or any of the deputy [175] marshals? A. No.

(Testimony of Laura Herrington.)

Q. Have you been in Mr. Roth's office? When did you come down from your house? Were you home for dinner to-day?

A. Yes. I went home for dinner.

Q. What time did you come down to the courthouse? A. About fifteen minutes to two.

Q. I mean this evening since adjourning time, since dinner time—supper time, we will call it. What time did you get to the courthouse this evening?

A. I don't know. I left aunty's at ten minutes to eight.

Q. Did you talk to your father since you left here at half-past five? A. I saw daddy there.

Q. Where, at home? A. No. Here.

Q. Has anybody, any of these people I have mentioned, or anybody else, told you that you had better answer upon the stand in answer to my questions, that you don't remember? Did anyone tell you to say that? A. No.

Q. Well, who did you tell about this affair up there at the house, besides your father?

A. My mother.

Q. And your mother. And who else?

A. Ed. Hall.

Q. Who else? When did you tell Ed. Hall?

The COURT.—Just a minute. The “affair up at the house” may not be sufficiently definite. [176]

Mr. MARQUAM.—Q. What I mean, Laura, about the affair up at the house, is about the time that Mr. Wooldridge came there in the evening that you told

(Testimony of Laura Herrington.)

about. That is what I refer to as "that affair." Who did you tell about that besides your father and your mother and Ed. Hall?

A. I don't believe I told anybody else.

Q. Did you tell Mr. Roth?

A. I don't remember.

Q. You don't remember whether you ever told him.

A. I might have told him. He might have heard it when I was in the marshal's office there.

Q. Were you telling Marshal Miller about it?

A. About Wooldridge coming down to my place?

Q. Yes.

A. Yes. I told Marshal Miller about it.

Q. When? A. I don't know.

Q. Was it that night or the next day?

The COURT.—Q. Do you remember when you first told Marshal Miller about Mr. Wooldridge being down to your house, as you have stated? Was it the next day?

A. Yes. I think it was the next night.

Mr. MARQUAM.—Q. The next night. Where were you? A. In Mr. Roth's office.

Q. And what time that evening was it?

A. We went there at seven-thirty.

Q. Was that before you went up to Rose's repair shop? A. It wasn't on the same evening.

Q. It wasn't on the same evening.

A. No. [177]

Q. I understood you to tell us, Laura, in answer to Mr. Roth's questions, that it was the next evening

(Testimony of Laura Herrington.)

after Mr. Wooldridge had been up to your house that you were to meet him at Rose's repair-shop. Isn't that true? Didn't you say that a while ago? I may have misunderstood you, but I understood you to say that the appointment you made with Wooldridge up at your house that evening was for the next evening up at Rose's repair-shop. Didn't you say that?

A. Well, I made two arrangements.

Q. What were the two arrangements?

A. Well, that night he came at eight-thirty so we made arrangements to go up to Rose's shop the next evening.

Q. That is what I thought. That is what I understood you to say before. And you were to be up there at eight o'clock, weren't you, or half-past eight, or what was it? A. Eight.

Q. Was it half-past seven, just a half hour before, that you were in Roth's office and Miller was there and you were telling about this, about what happened up at the house the night before?

A. I don't remember that either.

Q. Where did you go from—Where were you when your father took you and walked with you as far as the corner of the First National Bank?

A. I came home.

Q. Then you must have been mistaken about your being up to Mr. Roth's office at half-past seven the next evening, aren't you? What do you have to say to that, Laura? (No answer.) Let me ask you this question: From the time you say [178] Wooldridge was up at your house at half-past eight,

(Testimony of Laura Herrington.)

from that time until you went up to Rose's repair-shop, had you talked with Mr. Miller and Mr. Roth between those times?

A. I met Mr. Miller on the road.

Q. What road?

A. Going up to Mr. Rose's.

Q. When you were on your way up? A. Yes.

Q. Well, did you talk with him?

A. Yes. We stopped and talked.

Q. Where did you meet him?

A. By the N. C. back.

Q. By the N. C. Anybody with you besides?

A. My daddy.

Q. Was that when you were coming up from the house? A. Yes.

Q. Was that on Front Street?

A. No. Back of the N. C.

Q. Was Mr. Miller waiting for you?

A. No. He was just coming up.

Q. He was coming up the street too? A. Yes.

Q. And walking along with you?

A. Walking a little ways.

Q. You knew when you started from home where you were headed for and where you were going, didn't you? A. Yes.

Q. And your father knew? A. Yes.

Q. And Miller knew? A. Yes. [179]

Q. Where did Miller find out? Had you talked with him in the meantime?

A. I had talked with him, but I don't remember when it was.

(Testimony of Laura Herrington.)

Q. You can't fix the time? A. No.

Q. You must have talked with him, because he gave you some instructions before you went up to Rose's repair-shop as to what to do and what to say, or how to talk, to talk loud? Did he tell you to talk loud up there? A. Yes.

Q. Where were you when he told you that?

A. By the N. C.

Q. Didn't he tell you that before it was arranged for you to go up there to Rose's repair-shop?

A. He told me right then.

Q. Is that the first time he told you, or can't you think and determine?

A. No. It was not the first time.

Q. Just think back and tell us where the first time was that he talked to you, and who was present. Can you do that, Laura? Was it up in Mr. Roth's office? (No answer.) Can you tell that? Was it in the marshal's office? A. No.

Q. Was it at your house?

A. It might have been, but I don't remember.

Q. It might have been up at your house.

A. I am not sure.

Q. You are not sure whether it was in Mr. Roth's office or not. A. I am not sure. [180]

Q. Wherever it was, you had a talk with Marshal Miller, and, wherever it was, Mr. Roth was present at the time? A. Mr. Roth was always present.

Q. Mr. Roth was always present all right. Was any other person present at that time?

A. My daddy.

(Testimony of Laura Herrington.)

Q. And your daddy. Anybody else?

A. No.

Q. You think not. Well, now, at that meeting Laura, wherever it was, when Mr. Roth and Mr. Miller and your daddy were present, it was talked over as to what you were to do, was it not; wasn't it talked over, Laura, so that when you did go up to Rose's, you went up there to carry out a program or an arrangement you had talked over? Isn't that true?

A. Yes.

Q. Tell this jury what your instructions were, and what you were supposed to do, and what they told you to do or say?

A. I was supposed to talk loud.

Q. And what were you supposed to say?

A. They didn't tell me what to say.

Q. Just told you to talk loud? A. Yes.

Q. You knew what you were going there for, didn't you? A. Yes.

Q. Did you know that they would be listening or peeking through a hole somewhere to hear or see what was going on?

A. I knew somebody would be around.

Q. You knew it would be some of the marshals but you didn't know which one? A. Yes. [181]

Q. Do you know whether they had this machine that you described a while ago that was up at your house?

A. I don't know.

Q. Attached around somewhere?

A. I don't know.

Q. Well, now, when you came up the street, back

(Testimony of Laura Herrington.)

on Second Street, back of the N. C., you came along with your father and then Mr. Miller joined you and walked along with you. Now, where did he leave you?

A. I think it was by the telephone office.

Q. And you and your father went on up to the corner of the First National Bank, and then you went on up Second Street, did you? A. Yes.

Q. And where did your father go?

A. He went up town.

Q. Whereabouts? Which way did he go after he left you?

A. Up towards the Fairbanks Corner.

Q. Now, on your way from the corner here of the First National Bank after your father left you, in going up to Rose's did you meet anybody?

A. I saw a woman coming up the street.

Q. What I mean is; any of these men that you knew, these deputy marshals. Did you see any of them? A. No. I didn't see any of them.

Q. Up on the corner—You know where Mrs. Wilson's bath-house is, up there at the corner as you turn around and go down towards Rose's repair-shop? A. Yes. I know. [182]

Q. Did you see anybody there, any of the marshals? A. No.

Q. You turned. Did you walk directly up Second Street and turn around the corner and go down to Rose's repair-shop?

A. A woman was coming up the street, so I walked up a ways and then came back.

(Testimony of Laura Herrington.)

Q. Up which way? A. Toward Bill McPhee's.

Q. Past Rose's shop? A. Yes.

Q. Did you look in?

A. Yes. And I saw—(interrupted).

Q. What did you see? A. A light.

Q. Anything else? A. No.

Q. Nothing else? A. No.

Q. Was there a light in the front room?

A. No.

Q. Wasn't there a light in the outer part of that room? A. In the back room.

Q. None in the front room.

A. None in the front room.

Q. You went down towards Bill McPhee's and then you came back. A. Yes.

Q. How far did you go down, as far as the corner before you turned around and came back?

A. Just as far as the corner.

Q. Well now, why—When you saw a woman in that neighborhood, why did you hesitate to go in? [183]

A. I didn't want her to see me go in.

Q. You knew that people knew—a good many people knew you were going there?

A. No. I didn't know that.

Q. You knew that the marshals and Mr. Roth and your father knew that you were going there, didn't you? A. I knew that.

Q. And still, notwithstanding that fact, you didn't want this woman, whoever she was, to see you go in there. Is that true? Now, why was that? Why was that, Laura, that you didn't want this woman to

(Testimony of Laura Herrington.)

see you? A. I don't know.

Q. Was she a stranger to you? A. Yes.

Q. You didn't know who she was. A. Yes.

Q. Where was she when you first saw her.

A. Coming down the street.

Q. Whereabouts on the street?

A. She was coming up towards Rose's.

Q. From McPhee's side? A. No.

Q. Then coming down the street.

A. This other way.

Q. Did you continue on until she passed you?

A. Yes. I walked slowly, and she passed me.

Q. And she passed you and went around the corner, did she, or turn up Front Street?

A. She went up this way. (Indicating.)

Q. She went up Front Street. A. Yes. [184]

Q. And as soon as she turned the corner and got out of sight, you went back? A. Yes.

Q. Had you been walking fast or slow coming up the street?

A. I was walking. I wasn't walking very fast.

Q. Were you calm and collected? You understand what I mean. A. Yes.

Q. Were you calm and collected when you walked into Rose's repair-shop? A. Yes.

Q. Were you nervous? A. No.

Q. You were not? A. No.

Q. Not a bit?

A. No, I don't see why I should be.

Q. You were not a bit nervous? A. No.

Q. Just as calm as you are now on the stand?

(Testimony of Laura Herrington.)

A. Yes.

Q. Just tell us now, when you walked into the front door, what was the first thing that was done, or what was the first thing that was said.

A. I walked in there and I think Mr. Rose said, "Hello." And I walked around the room a while. Then Mr. Wooldridge got up and buttoned his coat up, and he said, "Well, I guess I will go out for a walk."

Q. Mr. Wooldridge said that?

A. Yes. And Mr. Rose said, "Aren't you going to take Laura along with you?" "No," he said, "I will leave Laura for you."

Q. Just repeat that again. (Objection by plaintiff.) [185]

Q. You say that Mr. Wooldridge said that he was going to take a walk? A. Yes.

Q. That was not Mr. Rose.

A. It was not Mr. Rose. It was Mr. Wooldridge.

Q. Mr. Wooldridge. And he got up and buttoned his coat? A. Yes. He buttoned his coat.

Q. That was how long after you went in there?

A. A few minutes.

Q. About how long?

A. A few minutes, I said.

Q. I know, but that is indefinite. Was it a minute, or two minutes, or three minutes, or ten minutes? A. I don't know.

Q. And Rose said to him, "Aren't you going to take Laura with you?" A. Yes.

Q. And he said to Mr. Rose, "No, I am going to

(Testimony of Laura Herrington.)

leave her to you."

A. He said, "I am going to leave Laura for you."

Q. Did he go out?

A. He went into the other room.

Q. Who, Wooldridge? A. Yes.

Q. Well, what did you do?

A. I stayed in the other room.

Q. You mean by the other room the back room?

A. The back room. Yes.

Q. Where was Rose?

A. He was lying on the bed. [186]

Q. Still lying on the bed? A. Yes.

Q. Well, what else occurred?

A. And then, a little while after, Mr. Rose got up and went into the other room and they whispered; then Mr. Wooldridge came back and he told me to turn out the light, somebody might see me.

Q. Did you turn out the light? A. Yes.

Q. All this time, as I understand you, the light in the front room was out? A. Yes.

Q. Was it, at any time when you were in there, turned on?

A. After they *would* out somebody was watching them.

Q. How is that?

A. After they found out somebody was watching them.

Q. After they found out somebody was watching them, then they turned on the light? A. Yes.

Q. In the front room? A. Yes.

Q. And in the back room?

(Testimony of Laura Herrington.)

A. No. The back room light was out.

A. The back room light was out all the time that you were there, in complete darkness? A. Yes.

Q. You and Mr. Rose and Mr. Wooldridge—

A. No.

Q. Well, who?

A. Mr. Wooldridge told me to turn out the light, and I did. [187]

Q. Then where was Mr. Rose and Mr. Wooldridge? A. He went back into the other room.

Q. They were in the front room? A. Yes.

Q. And you were in the back room all alone with the light out? A. Yes.

Q. And they were neither one of them near you?

A. No.

Q. Now, when you came into that store, didn't you say to Mr. Wooldridge, or whoever you saw first of the two, that somebody was following you and you wanted to get in behind there and hide, or get out of sight? A. No, sir. I didn't.

Q. Any such words as that? A. No such words.

Q. No such words? A. No.

Q. Well, did Wooldridge and Rose continue to stay out in the front room?

A. No. Mr. Rose came back and he said, "Laura, you better come away because there is somebody watching."

Q. Better come away because somebody is watching. How long were you in there altogether? Give us some—as near as you can, some correct idea, from the time you went in there until Mr. Rose told you

(Testimony of Laura Herrington.)

that you better go out because there was somebody watching.

A. You mean, after I turned the light out?

Q. No. I mean from the time you went in first; from the time you walked in the place until Mr. Rose said to you that [188] you better go out.

A. I have no idea.

Q. Can't you give the jury some idea?

A. No.

Q. Well, then, do you know, judging from the time that you left your house down there—I presume you know what time that was. If you do, give us as near a correct idea as you can of when you arrived at Rose's repair shop.

A. I didn't look at the clock to see.

Q. Were you not interested to know? A. No.

Q. You didn't care what time it was? A. No.

Q. You had an appointment at eight o'clock, didn't you?

A. Yes. I knew what time it was when I left home.

Q. Didn't you intend to keep that appointment promptly? A. Yes.

Q. Then, you were interested in what time it was.

A. After I got there I wasn't interested in the time.

Q. Do you know whether you got there in time to keep your appointment, that is, at the hour, or the exact time, or were you late, or ahead of time?

A. I don't know. I didn't look at the clock.

Q. Now, isn't it true, Laura, that when you passed

(Testimony of Laura Herrington.)

along the street there, in front of Rose's bicycle shop or repair shop, that when the front light in the main room is turned out and the light in this back room of the partition is turned on, that a person passing along the street can more easily [189] see in the back room than if the front light is on? Isn't that true? A. Yes.

Q. That is true. What was the first remark that you made after you went in there, either to Mr. Wooldridge or to Mr. Rose?

A. I don't remember of talking.

Q. Do you remember?

The COURT.—Do you mean in the shop or in the back room?

Mr. MARQUAM.—From the time that you went into the shop, or into the back room. If there was nobody in the front room, you said nothing then, of course; you simply walked through the front room and walked into the back room where they were. Isn't that true? A. Yes.

Q. That is what I understood you to say. Now, when you got into the back room, what did you say first? A. I don't remember of talking.

Q. Do you remember of saying a word or anything from the time that you got in until you went out?

A. I think the first time I talked was when Wooldridge told me to turn the light out. I said, "What do you want me to turn the light out for?"

Q. What did he say?

A. He said he didn't want people to see me in there.

(Testimony of Laura Herrington.)

Q. Where was Mr. Rose at that time?

A. In the front room.

Q. Was Wooldridge in the front room too?

A. No. He was talking to me then. [190]

Q. How close was he to you?

A. I don't know. I didn't take time to measure.

Q. How close was he to you at the time he was talking to you? A. Not so very close.

Q. Give us some idea. How close was he to you?

A. I have no idea to give.

Q. What was the closest Wooldridge was to you at any time that evening?

A. I don't know. I didn't take notice of those things.

Q. Did he touch you at any time? A. No.

Q. He never laid his hands on you?

A. Not that I remember of.

Q. You would remember it if he had?

A. I don't know.

Q. You were instructed by either one of the three, Mr. Roth, or Mr. Miller or your father, that you were to talk loud in there, were you not?

A. Yes.

Q. And then after you did get in there and these people were there, all you said was to Mr. Wooldridge: "What do you want me to turn the light out for?" That is all you said. Is that true?

A. No. That was not all.

Q. Well, what else was there? Just tell us all. I asked you a while ago to tell us all. What else did you say?

(Testimony of Laura Herrington.)

A. I don't see how people could see me. I was standing out of the way so they couldn't.

Q. You didn't say to him that people couldn't see you. Was [191] there anything else that you said to him? A. No, not that I remember.

Q. Not that you remember. Were you standing in back of that partition to one side of the entrance?

A. Yes, sir.

Q. Near the bed? A. Yes.

Q. Were you on the bed? A. No.

Q. How close were you?

A. I don't know how close I was.

Q. Standing up? A. Yes.

Q. You didn't sit down at any time?

A. After the light was turned out, I sat down.

Q. On what? A. On a chair.

Q. You didn't sit down on the bed? A. No.

Q. At no time? A. No.

Q. Was Mr. Wooldridge standing up?

A. He was sitting down when I went in there.

Q. After you got in there was he standing up or sitting down? A. He got up.

Q. Did he have a fur coat on?

A. I told you before, he did.

Q. Did he keep it on all the time you were there?

A. Yes. [192]

Q. Mr. Rose, when you got in there, was lying on the bed in his shirt sleeves, was he not?

A. He was dressed.

Q. Fully dressed?

A. Well, that is what I said; he was dressed.

(Testimony of Laura Herrington.)

Q. Did he have a coat on? A. No.

Q. That is what I am asking you. A man who has not got his coat on, we speak of him as being in his shirt sleeves. Is that the way he was?

A. Yes. He had a shirt on.

Q. When did he put his coat on?

A. Who, Mr. Rose?

Q. Yes.

A. I don't remember of seeing him put his coat on.

Q. You never did see him put his coat on?

A. He might have put one on when we went to the marshal's office. I don't know. He had one on then.

Q. You are quite sure those two remarks you made were all that was said by you while you were in the house? A. I said I wasn't sure.

Q. When Mr. Wooldridge said to Mr. Rose, "I am going to leave Laura for you." Is that what he said "for you" or "with you," or "for you"? What did you say? A. He said "for you."

Q. What did you say?

A. I didn't say anything.

Q. What did Mr. Rose say?

A. "Hadn't you better take Laura along with you"? [193]

Q. And what did Wooldridge say?

A. "No. I am going to leave her for you."

Q. "Going to leave her for you." Did he start to go out then?

A. He went out into the front room.

Q. With his coat and hat on?

(Testimony of Laura Herrington.)

A. Yes. He had his coat and hat on.

Q. Apparently leaving the place.

A. I don't know. He didn't leave it.

Q. Why?

A. He stayed in the room until Mr. Rose came in.

Q. I am talking about the time that he started out and said he was going to leave you to Mr. Rose.

A. I told you he stayed in that room.

Q. In the back room? A. In the front room.

Q. In the front room. He was just standing there and talking that way, without making any move towards the door to go out. Is that the fact?

A. After Mr. Rose went into the front room, he talked to Mr. Rose.

Q. What did he say to Mr. Rose?

A. I don't know. I didn't hear.

Q. Did you try to hear?

A. No, sir, I didn't.

Q. You were not interested in knowing?

A. No.

Q. And then before anything else happened, somebody came to the front door, did they?

A. Well, after Mr. Rose came in and told me to come away; that he thought somebody was watching. [194]

Q. Had he been outside, that is Rose?

A. They were standing in the doorway.

Q. And he came back and said that you had better get out of there?

A. Yes, that I had better go out.

Q. Did he say why?

(Testimony of Laura Herrington.)

A. Somebody was watching.

Q. Is that all you know— A. That is all.

Q. —about it? How long was it then before the marshals came in?

A. I was just going to the door when they came in.

Q. Going out the front door? A. Yes.

Q. Who came in?

A. Hall and McMullen I think.

Q. Who else? A. And a little short fellow.

Q. A short fellow, a marshal?

A. I don't know.

Q. Did you ever see him before?

A. No. I never saw him before.

Q. Have you seen him since? A. No.

Q. It was not this gentleman who is in court here (indicating Peter McMullen).

A. He came in with Mr. Hall.

Q. Mr. Hall and Mr. McMullen.

A. And that little short fellow; the three of them.

[195]

Q. You don't know who it was?

A. No. I have no idea who it was.

Q. Did you see him afterwards?

A. No. Well, he walked up to the place here.

Q. That is the first time and the last time you have ever seen him, is it? A. Yes.

Q. Was he just a casual passer-by there and happened to drop in or was he with the marshals?

A. He was with these men. I know he came and sized me up and said: "Yes. That is the girl."

(Testimony of Laura Herrington.)

Q. Who did he say that to? A. I don't know.

Q. That is to these other officers?

A. I guess that is who it was.

Q. You knew who Mr. Hall was?

A. I had no idea who they were. I was surprised to see them.

Q. Didn't you know those men were to be watching around there?

A. I didn't know they were marshals. It was the first time I ever knew of it.

Q. Then what did you do?

A. I was surprised. That is all.

Q. Where did you go?

A. I stayed there until we came up to the marshal's office.

Q. Did this little short fellow go with you up there? A. I didn't notice.

Q. Who did go up with you to the marshal's office?

A. Marshals Miller and Hall, and Mr. Rose, and Mr. Wooldridge.

Q. And that ended that affair, did it, as far as you know? A. Yes. [196]

Q. Did you ever see Mr. Wooldridge or have any other appointment or date with him? A. No.

Q. You have had some difficulty in recollecting and remembering your story from that time up to the present time, haven't you, Laura? A. Yes.

Q. You have had frequent talks, conversations, with Mr. Roth in his office going over this matter, haven't you? A. Yes.

(Testimony of Laura Herrington.)

Q. And on a great many of those occasions you couldn't remember and he would help you to remember, wouldn't he? A. Yes.

Q. And sometimes you would tell *and* different story than you had told before, wouldn't you?

A. I don't know.

Q. You might have? A. I don't know.

Q. Do you remember one time that you were in Mr. Roth's office with your step-brother, Henry McPhee? A. Yes.

Q. And that you were having difficulty in remembering the correct story; that you had told a different story, and that Mr. Roth said to you: "Stick to what you have said, no matter what it was"?

A. Yes, I remember that.

Q. Isn't that what you have been doing since then; been trying [197] to follow those instructions?

A. I have told nothing but the truth.

Q. That is what he told you: To stick to what you had said, no matter what it was?

A. Stick to the truth. Yes.

Q. I ain't asking what else he said. But he used that expression to you and told you in the presence of your brother, or your step-brother, to stick to what you had said, no matter what it was?

A. Yes.

Q. He used those words? A. Yes.

Q. How many times were you up to Mr. Roth's office going over this matter?

A. I didn't stop to count.

Q. How many times after you lost track of it?

(Testimony of Laura Herrington.)

A. I have been up here quite a few times.

Q. Every day, haven't you? A. For a while.

Q. Mr. Roth has been down to your house?

A. Yes.

Q. How many times? A. Once.

Q. When was that? A. Sunday.

Q. What was he doing down there Sunday?

A. He came down and asked about some men.

Q. What men?

A. I don't know. He had a list of names. I didn't know them. [198]

Q. He brought the jury list down to you and asked you what you thought of them?

A. I don't know whether it was the jury.

Q. You don't know what list that was that he had down to your place?

A. Well, it was a list of names, I know.

Q. Don't you know those are the list of names of the trial jury in this court that he came down there with and submitted to you?

A. It might have been.

Q. Don't you know that?

A. Daddy said it was the jurymen.

Q. And he asked you—went all over that list one by one to find out if you knew them?

A. Yes. He wanted to know if I knew them.

Q. And you told him something about a man that was on this regular panel of jurors, and he said: "We won't have him on this jury."

A. He didn't say that.

Q. What did he say?

(Testimony of Laura Herrington.)

A. I don't know what he said.

Q. You are sure he didn't say that.

A. No, he didn't say that.

Q. What did he say?

A. I don't remember what he said.

Q. You told him about some man, naming some man on this regular panel of jurors? A. Yes.

Q. And what did he say to that? Didn't he say he wouldn't [199] have him on the jury?

A. No, he never said that.

Q. He came down there to have you size up the jury list. Is that right?

A. We talked about it.

Q. Talked them all over, did you?

A. Talked what over? About this Wooldridge?

Q. No. About these men on this jury list.

A. He asked me if I knew them, and I told him that I didn't, but there was one I knew.

Q. But there was one you did know. Well, what did Mr. Roth ever promise you in connection with this case or your testimony in this case, if anything?

A. He didn't promise me anything, but he told me this would give me a good name.

Q. This would give you a good name?

A. Yes, by telling on these men.

Q. With whom was this to give you a good name?

A. Well, he told me I had a bad name before.

Q. And when you told you would have a good name? A. After all this was through.

Q. That you would have a good name, and you believed that. A. Yes. I believed it.

(Testimony of Laura Herrington.)

Q. Well, what besides that. Besides what was going to happen to you in that respect, what did he say he would do for you?

A. He didn't say he would do anything.

Q. He didn't say he would do anything?

A. Nothing that I remember of.

Q. Well, now, let me ask you if Mr. Roth didn't say this to you [200] in the way of what he was going to do: "All the women in Fairbanks except two or three are my friends and they will be your friends, and all the society women will be your friends"?

A. He didn't say that all the society women would be my friends.

Q. He didn't say that? A. No. He didn't.

Q. You are sure of that?

A. I am sure of that.

Q. What did he say?

The COURT.—Are you asking these questions for impeaching questions? If you are, Mr. Marquam, I think you really ought to fix the time and place and persons present.

Mr. MARQUAM.—I will fix the time, inasmuch as that is a denial of it.

Q. Let me ask you this question, Laura: If, at your house on March 2, 1916, yourself and your half-brother and your mother and your sister Catherine—or half-sister— She is your half-sister, isn't she?

A. Yes.

Q. And your half-brother, Henry, being present, you didn't say to them—(interrupted).

(Testimony of Laura Herrington.)

The COURT.—What was the time?

Mr. MARQUAM.—March 2, 1916. That is, I will put it on or about that date, that is as near as I can fix it. I will fix it on that date.

Q. (Continuing.) Didn't say to them that Mr. Roth told you and said this to you in substance and effect: That he had said to you in his office just a short time before this that "all the women in Fairbanks except two or three are my [201] friends, and they will be your friends, and all the society women will be your friends."

A. He didn't say all the society women. He never mentioned those at all.

Q. The question is not what he said to you, but what you said to your half-brother and half-sister and your mother.

The COURT.—The question is, Laura: Did you tell your half-sister and your mother and half-brother that.

A. No. I told him Mr. Roth said all the good people in this town will be my friends. That is what I told my mother, brother and sister.

Mr. MARQUAM.—Q. You didn't tell them, or at least, one of them, or more of them, in the presence of all of them, that Mr. Roth was going to put you in society? A. He never said that.

Q. The question is not whether he said that. Didn't you tell these people that I have mentioned that he said it?

A. No. I don't remember of that.

Q. You didn't tell Catherine that?

(Testimony of Laura Herrington.)

A. Not that I remember of.

Q. Nor Henry McPhee?

A. No. I don't remember telling him that.

Q. Didn't you, then, Laura, after having said that, tell Catherine that you would stick up your nose at these people that you had known here before? Didn't you tell her that, or words to that effect?

A. I told her I wouldn't speak to my cousins any more as long as they wouldn't speak to me.

Q. Didn't you tell them in substance and effect that after Mr. [202] Roth had done all these things for you, you were going to stick up your nose at all these people you had known before?

A. No, I don't remember saying that.

Q. You don't deny that you did say that?

A. No, I don't remember.

Q. Did Mr. Roth promise you anything else?

A. No.

Q. Or say anything else to you— A. No.

Q. You say he did not? A. I said that.

Q. I will ask you if in his office on the 3^d day of March, 1916, yourself and Catherine, your half-sister, being present, and Mr. Roth, Mr. Roth didn't say to you: "I may get you a position outside"?

A. Yes. He said that.

Q. Did you consider that a promise? A. No.

Q. What did Mr. Miller say to you in regard to what you should say when you came on the witness-stand, as to these happenings that you told about; what directions did he give you?

(Testimony of Laura Herrington.)

A. Stick to the truth, no matter what it is.

Q. He didn't say anything else, of any other character? A. Not that I remember of.

Q. Let me ask you this question: If you told—if you made this statement upon the 22d day of February, 1916, at Mrs. Cooley's house, Mrs. Cooley, Henry McPhee, your half-brother, and yourself being present; that Miller told you in Roth's office, "If you have told a lie, stick to it"? Did you tell them that?

A. No, not that I remember of. I had a fight with Henry over that. [203]

Q. You had a fight with him over that?

A. Yes. I don't remember saying anything of the sort.

Q. What did you have a fight with him over?

A. Because I don't remember saying anything like that. I don't see why they should get it against me.

Q. Why was there any occasion—(interrupted).

A. Because I never said it. I don't remember saying anything like that. I don't see why they get that against me.

Q. Well, I am just asking you if you said it?

A. Well, I haven't said it. I don't see why I should say it against Mr. Miller, when he never said it.

Q. I don't know either.

A. He always told me to tell the truth, and which I have told.

Q. And I believe that absolutely, but I am asking

(Testimony of Laura Herrington.)

you if you didn't tell them,—(interrupted).

A. No, sir.

Q. —what I have just quoted.

A. I don't remember ever saying anything of the sort.

Q. You might have said it?

A. No. I don't think I have.

Q. You know that these people that I have mentioned say that that is what you said?

A. That is what they told me I said.

Q. And that is what you mean, by having a fight with them about it? A. Yes.

Q. You are insisting that you didn't say it?

A. I know I didn't say it.

Q. They insisted that you did say it. [204]

A. They say I said it.

Q. Your half-brother said that.

A. And so did Mrs. Cooley. She said, "Laura, you did say it." And I said, "I didn't," which I didn't say. I know I didn't say it.

Q. But Mr. Roth did say to you: "Whatever you have said, stick to it, no matter what it is"?

The COURT.—You need not answer that question. It has been answered four or five times.

Mr. MARQUAM.—All right.

(Trial continued until 10 A. M. to-morrow morning; and the jury, after being admonished as usual, withdraw in charge of the bailiffs. March 9, 1916, 10 A. M. Defendant and his attorneys, and the district attorney and the jury are present, and the trial is resumed.)

(Testimony of Laura Herrington.)

LAURA HERRINGTON, continues on cross-examination.

By Mr. MARQUAM.—Q. Laura, what time was it that you first knew about or heard about the dictaphone; when did you first know that that was being placed in the house, or going to be placed in the house? A. That same night.

Q. When they came up there? A. Yes.

Q. That is the first you knew about it?

A. Yes.

Q. Did you know before that that some of the deputy marshals, or somebody else, were going to be around there and listen and overhear anything that might be said? A. Yes.

Q. When did you first learn of that, Laura?

[205] A. When Miller talked to me.

Q. That same day or before that?

A. I don't remember.

Q. Well, now, that is not so important as to find out whether he explained to you the reason for his wanting to overhear what was said. Why did he want to overhear, or want somebody to overhear what was said between you and Mr. Wooldridge if he came there, if you know?

(Plaintiff objects as previously asked of and answered by the witness. Objection sustained.)

Q. Laura, I will ask you this: As to whether or not it was to get further evidence with regard to some—about this time that you were up in the cabin with Wooldridge, that you were telling them about; or to get some evidence about some other act, that

(Testimony of Laura Herrington.)

they wanted to overhear what was said?

A. They wanted to find out about the other time.

Q. That was all they wanted, was it? A. Yes.

Q. Do you know whether there was any hole bored in the roof or ceiling of this room at the time they put this machine up?

A. They bored a hole. They did bore a hole.

Q. What kind of a hole was that; large enough to see through, or just for the wires to go through?

A. Just for the wires to go through.

Q. Could they see from where they were upstairs down into the front room?

A. I don't know.

Q. You don't know whether they could or not. You said yesterday, Laura, that the first person that you had said anything to about this alleged affair up there in the cabin with Mr. [206] Wooldridge, was Ed Hall. A. Yes.

Q. You said that you had not spoken to your father or your mother about it because, I think you said, you were ashamed? A. Yes.

Q. You were not ashamed to tell Ed Hall about it?

A. No.

Q. Were you perfectly free to talk about sexual matters of that kind with Ed Hall?

A. I don't know. I always told him things.

Q. You told him things of that kind, did you?

(Plaintiff objects. Argument.)

Q. Answer this question directly: Were you free to talk to Ed Hall about matters of his kind, sexual matters? Were you free to do that?

(Testimony of Laura Herrington.)

A. I never talked over matters like this always with him.

Q. You always did?

A. No. I said I didn't always.

Q. Was this the only time?

(Plaintiff objects as irrelevant, incompetent and immaterial. Objection sustained. Defendant excepts. Exception allowed.)

Mr. MARQUAM.—That is all.

Redirect Examination.

(By Mr. ROTH.)

Q. Laura, Mr. Marquam asked you about the coat that Mr. Wooldridge wore the night that you went with him to the cabin, whether or not there was fur on the outside or on the inside. Do you know that there was no fur on the inside of that coat?

A. No, there was not any fur on the inside.

Q. How do you know there was not any fur on the inside? [207]

A. Because I laid on it.

Q. How did you lay on it? A. On my back.

(Defendant objects as not redirect examination. Overruled. Defendant excepts. Exception allowed.)

Q. How did he lay on you, Laura, with his back, or with his front, or how?

(Defendant objects as not redirect examination. Plaintiff asks permission to ask these questions as part of the direct examination, and the Court grants

(Testimony of Laura Herrington.)

permission so to do. Defendant excepts, and is allowed an exception.)

Direct Examination (Resumed.)

Q. Now, answer the question, how did he lay on you, with his back, or with his front, or with his side, or how?

(Defendant objects as not redirect. The Court states that plaintiff asked and was given permission to ask the question not as redirect examination, and overruled the objection. Defendant excepts. Exception allowed.)

Q. Answer the question, Laura. Do you understand the question? A. Yes.

Q. Well, answer it. A. With his front.

Q. With his front. Now, when he was laying on you at that time, state whether or not his legs were apart.

(Defendant objects as not proper redirect examination, having been answered fully on direct examination,—there having been nothing further on cross-examination to justify such examination at this time. Objection overruled. Defendant excepts and is allowed an exception.)

Q. (Question read.)

A. Mr. Roth, I don't care to answer those kind of questions.

Q. I know that it is unpleasant, but answer the question.

(Defendant objects to any explanations on the part of counsel, and objects to any further questions; and the Court, directs witness to answer the question, and

(Testimony of Laura Herrington.)

directs the reporter to read the question. Whereupon the [208] reporter read the question as follows: "Now, when he was laying on you at that time, state whether or not your legs were apart." Defendant objects as not proper redirect examination, and for the further reason that it is leading and suggestive. Objection sustained as to its being leading and suggestive.)

Q. Now, tell the jury, Laura, if you can, what he did when he was laying on you at that time.

(Defendant objects as not proper redirect examination. Objection overruled. Defendant excepts. Exception allowed.)

Q. Answer the question, please. (No answer.)

The COURT.—Do you understand the question?

A. Yes.

Q. Well, answer the question.

A. I can't explain it.

Mr. ROTH.—Q. Can't you tell what he did?

(Defendant objects to counsel cross-examining his own witness; and the Court states that witness has answered the question by saying that she can't explain it.)

Q. I will ask you, Laura, if you know what is meant by the term "sexual intercourse."

(Defendant objects as not proper redirect examination, as all having been fully asked and answered on the direct examination of the witness. Objection sustained as having been asked and answered.)

Q. I will ask you this question: Did he at that

(Testimony of Laura Herrington.)

time have sexual intercourse with you?

(Defendant objects as not proper redirect examination, having been fully covered in the direct examination, and as being leading, and suggestive, Objection overruled. Defendant excepts. Exception allowed.)

Q. Answer the question. A. Yes.

(Defendant moves to strike from the record the questions and answers; the questions directed to this witness, and her answers, relative to any act of sexual intercourse testified to on her redirect examination, for the reasons stated in our objections to the admission of the testimony. Motion denied. Exception allowed.) [209]

Redirect Examination (Resumed.)

Q. You stated that you thought that this was in 1913, about Christmas. You said that you were in town at the Christmas vacation. Was it last Christmas vacation or last Christmas holidays, this last one, that you were in here on that visit from Ester?

A. Well, the last was in 1915.

Q. What? A. The last was 1915.

Q. Now, was it the Christmas before that?

A. Yes. I guess I am mixed up on that.

Q. It was the Christmas you lived at Ester, anyway.

The COURT.—Did you intend that statement as a question?

Mr. ROTH.—Q. Was it the Christmas while you lived at Ester?

(Defendant objects as leading and suggestive.

(Testimony of Laura Herrington.)

Objection overruled. Defendant excepts, and is allowed an exception.)

A. Yes.

Q. How many Christmases did you live in Ester?

A. One Christmas.

Q. Laura, Mr. Marquam asked you if you stated that in my office that I told you to stick to what you have said, no matter what it was, or something to that effect. What else did I say to you at that same time, if anything?

(Defendant objects as incompetent, irrelevant and immaterial, what else he said. Objection overruled. Defendant excepts. Exception allowed.)

A. I don't remember what else you said.

Q. How is that? A. I don't remember.

Q. Did I ever at any time intimate to you to tell anything that was not true? [210]

(Defendant objects as leading, suggestive, cross-examining his own witness, and trying to get an answer from the witness on a question she says she don't remember, and a party calling a witness has no right to cross-examine the witness unless the witness is hostile, and it is not apparent that this witness is hostile. Objection overruled. Defendant excepts. Exception allowed.)

A. Not that I remember of.

Q. What did I tell you in that respect?

A. What Mr. Marquam said.

Q. No. But with reference to telling the truth, what did I tell you always?

(Defendant objects as leading, suggestive, and

(Testimony of Laura Herrington.)

cross-examination of his own witness. Objection overruled. Defendant excepts. Exception allowed.)

A. You always told me to tell the truth.

Q. Mr. Marquam asked you about a time that I was with you down at your house on Sunday when I had a list of names, and you told him that you told me that you knew one man that was on the list: Is that one man that you spoke of sitting on the jury now? A. Yes, sir.

Q. That was Mr. Rosenthal? A. Yes, sir.

Mr. ROTH.—That is all.

Recross-examination.

(By Mr. MARQUAM.)

Q. With regard to the advice that Mr. Roth gave you, or the direction—I think that is clear in your memory—was to stick by whatever you said, no matter what it was. A. Yes.

Q. That is true is it? That is approximately correct; and he may have said something about these other things you [211] testified to?

A. I don't know.

Mr. MARQUAM.—You don't know. That is all.

Mr. ROTH.—Q. Who was present when I told you that; was Mr. J. H. Miller?

A. My brother may have been present, but I don't remember if he was.

Mr. ROTH.—That is all.

Mr. MARQUAM.—That is all.

Testimony of Ed Hall, for Plaintiff.

ED HALL, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name? A. Ed Hall.

Q. Where do you live? A. Fairbanks.

Q. What part of Fairbanks do you live in?

A. I live down just on Second Street across Bonni-field Street, the third house.

Q. Are you acquainted with Laura Herrington?

A. Yes, sir.

Q. How long have you known her?

A. Ever since she was a little child, a little baby.

Q. Do you remember where the Herringtons lived a year ago last Christmas?

A. They were living on Ester at that time.

Q. Did you see Laura during the Christmas holidays of that year? [212] A. I did. Yes, sir.

Q. Do you know what times she came to town, about?

A. The family came in Christmas week.

Q. Do you know how long they stayed in?

A. They stayed in I think until after New Years.

Q. Do you know where they stopped?

A. Al Morency's.

Q. Did you have any talk with Laura Herrington during that time concerning W. H. Wooldridge?

(Defendant objects as incompetent, irrelevant and immaterial. Objection overruled. Defendant excepts. Exception allowed.)

(Testimony of Ed Hall.)

A. Yes, sir.

Q. Where did you have that talk?

A. At Al Morency's.

Q. When was that?

A. It was about I should judge two days before Christmas, two or three days before Christmas Eve.

Q. What did she tell you at that time?

(Defendant objects as incompetent, irrelevant and immaterial. Overruled. Defendant excepts and is allowed an exception.)

A. She told me that she was on her way home that evening—the evening she told me—and she said: “I met Mr. Wooldridge down at Gordon's Glass Block” and he wanted her to take a walk with him, and she went with him, she went up to a cabin across from his place, and she says that he done something to her and he gave her two dollars and a half, and she said he still owed her another dollar, is the way she explained it to me.

Mr. ROTH.—You may cross-examine. [213]

Cross-examination.

(By Mr. MARQUAM.)

Q. You are telling just exactly what she said?

A. That is as near as I can remember.

Q. Is that correct, or is it as near as you can remember? A. That is correct.

Q. Have you talked with her lately about it?

A. No, sir.

Q. You haven't talked with her lately.

A. Not about that. No, sir.

Q. Since when haven't you talked with her?

(Testimony of Ed Hall.)

When was the last time you talked with her about it?

A. That night was the last time I ever talked with her about that.

Q. Never mentioned it since.

A. Not to her, no, sir, or to anybody else.

Q. Did you tell her mother? A. No.

Q. Did you tell her father? A. No.

Q. They were here?

A. They were here at the time.

Q. Why didn't you tell them?

A. She asked me not to tell and she would tell me something, and I promised her I wouldn't tell.

Q. And that is the reason you wouldn't go to her parents with a thing like that and tell about it.

A. That is the reason.

Q. Did you go to Mr. Roth, or the district attorney that was here? A. No. [214]

Q. You kept it to yourself. A. Yes.

Q. When Mr. Wooldridge was being prosecuted, then who did you first tell about it in this case?

A. I told the grand jury.

Q. Did you just keep that right in your own mind?

A. I did.

Q. And never said a word to anybody about it, until you were called by the grand jury.

A. I did.

Q. You were being investigated by the grand jury yourself, were you not, Ed?

(Plaintiff objects as irrelevant, incompetent and immaterial. Sustained. Defendant excepts. Exception allowed.)

(Testimony of Ed Hall.)

Q. Are you on terms of such intimacy with this girl that she feels at liberty to come to you and tell you about having sexual intercourse with men?

A. She always used to tell me her little secrets. I never expected anything like that. That was the first time she ever expressed anything like that to me.

Q. Is that the last time?

A. It is not the last time, but it is the first time.

Q. Have you ever had sexual intercourse with this girl? A. I never have.

The COURT.—Mr. Marquam, you know better than to ask any such question of the witness on the stand.

Mr. MARQUAM.—I think it is a perfectly legitimate proper question, or I wouldn't have asked it, your Honor.

The COURT.—It is not a proper question, and you will not repeat [215] the matter of asking questions of that kind again.

(Defendant excepts, and is allowed an exception.)

Mr. MARQUAM.—Q. You say, Mr. Hall, that you know about when this girl was out on Ester Creek.

A. Yes, sir. I know when she was out there.

Q. Were you out on Ester Creek at that time?

A. I was on Ester Creek.

Q. What were you doing out there?

A. I went out to see a party.

Q. You went out to visit the Herringtons, these girls, or some of them? A. Not every time.

Q. You went out and visited them?

A. I have been out and visited the family.

(Testimony of Ed Hall.)

Q. And visited these girls.

A. Not to visit the girls. No, sir.

Q. Isn't it true that George Herrington at one time on Ester Creek, when you went out there to visit these girls, told you if you didn't get out there would be trouble for you—get away from Ester? Isn't that true?

(Plaintiff objects as irrelevant, incompetent and immaterial, not proper cross-examination. Objection sustained. Defendant asks and is given an exception.)

Q. How many times has Laura Herrington been to your cabin?

A. Oh, I couldn't tell you. She has been there a good many times.

Q. And you never—you want this jury to understand you to say that upon, or a day or two before Christmas—of what year?

A. Year before last Christmas. It would be 1914, wouldn't it?

Q. You are testifying. Never mind asking Mr. Roth. [216]

A. It was a year ago last Christmas.

The COURT.—The remark may be stricken from the record, "Never mind asking Mr. Roth."

Mr. MARQUAM.—He looked right at Mr. Roth when he asked that question.

A. (By WITNESS.) A year ago last Christmas.

Mr. MARQUAM.—Q. 1914?

A. Yes, sir.

Q. And from that time up to the time that you were

(Testimony of Ed Hall.)

called before the grand jury, you never told anyone, or intimated to any one, such a thing?

A. I never did.

Q. You claim to be a friend of this family.

A. I do.

Q. And you didn't think it was a proper thing for you to, in a kindly friendly way, inform the parents of this child that such a thing as that had occurred, so that a repetition of it would be more improbable?

A. I kept it to myself to shield the girl after promising her I wouldn't say anything.

Q. Has she told you since that time of other affairs of this kind with other people, with other men?

(Plaintiff objects as irrelevant, incompetent, immaterial and not proper cross-examination. Objection sustained. Defendant excepts. Exception allowed.)

Q. Mr. Hall, how do you remember that date so clearly? A. The date before Christmas?

Q. 1914, just before Christmas.

A. The way I locate it so thoroughly, every Christmas, every time the children have been here, I have always made them presents of some kind, candy nuts, or something. They [217] generally have a Christmas tree, and it is generally held at Mr. Morency's. Some years they don't have it, but most years they do, and I was always their Santa Claus.

Q. How does that fix this particular time as being a day or two before Christmas? You were at the Morency house many times? A. Oh, yes.

Q. Why does this explanation that you are giving

(Testimony of Ed Hall.)

aid you in fixing this particular date?

A. Because I hadn't got the presents yet; I hadn't got the stuff yet—the oranges and bells and stuff. I know it was just before Christmas.

Q. That is the way you fix it.

A. Yes, because I hadn't got them yet.

Q. That is the only way you fix it.

A. That is about the only way.

Q. She showed you two dollars and a half?

A. She showed me money. I didn't count the money. She opened her hand and showed me money.

Q. How much was in her hand?

A. She said there was two dollars and a half. I didn't count it at all.

Q. Is that the only time she showed you two dollars and a half and told you she got it from Wooldridge?

A. That is the only time. That is the only time.

Mr. MARQUAM.—That is all.

Mr. ROTH.—That is all. [218]

Testimony of Catherine Herrington, for Plaintiff.

CATHERINE HERRINGTON, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name? A. Catherine Deion.

Q. You are sometimes known as Catherine Herrington? A. Yes.

Q. Your mother is George Herrington's wife?

A. Yes.

Q. And, Catherine, where were you living or work-

(Testimony of Catherine Herrington.)

ing during the Christmas holidays of last Christmas a year ago?

A. I wasn't working no place.

Q. Last Christmas a year ago? A. No.

Q. Where were you living at that time?

A. Ester.

Q. Were you in town during last Christmas a year ago? A. Yes.

Q. Where were you stopping in town during that time? A. Morency's.

Q. Did you ever stop at Axel Running's?

A. Yes, when I worked for them.

Q. When was that? A. In the spring.

Q. What time did you come in from Ester at that time, Catherine; how long before Christmas?

A. It was after Christmas.

Q. That you came in from Ester?

A. Yes. [219]

Q. How long after Christmas?

A. About two months or so.

Q. Well, but I mean during the holidays. Didn't you come in for the Christmas holidays last Christmas a year ago? A. Yes.

Q. What time did you come in with reference to Christmas? Did you come in before or after Christmas? A. Came in before.

Q. How long before? A. About a week.

Q. How long did you stay in here?

A. Until after Christmas.

Q. Did I understand you to say that at that time you were not stopping at Running's?

(Testimony of Catherine Herrington.)

A. No, I wasn't.

Q. During that time, that you were in here in that visit from Ester, Catherine, did your sister Laura show you any money? A. Yes.

Q. How much? A. Two and a half.

Q. What did she say to you?

A. She said that she got that from Mr. Wooldridge.

Q. When was it that you say she told you this with reference to Christmas; was it before or after Christmas? A. It was after Christmas.

Q. How long after Christmas was it?

A. I don't exactly remember, but I know it was when I was working at Runnings. [220]

Q. I thought you said you were not working at Runnings at that time?

(Defendant objects to counsel cross-examining his own witness. Objection overruled. Defendant excepts and is allowed an exception.)

A. I was working for Running's at the time she showed me the two and a half. I was working at Running's, and that was after Christmas.

Q. That was after Christmas? A. Yes.

Q. Where were you when Laura showed you this?

A. On the street.

Q. Just what did she tell you?

A. She showed me the two and a half, and I asked her where she got it, and she said from Mr. Wooldridge.

Q. Was that all she said to you?

A. That was all she said.

(Testimony of Catherine Herrington.)

Mr. ROTH.—That is all.

Cross-examination.

(By Mr. MARQUAM.)

Q. Catherine, what time did you commence to work for Running?

A. About two months after Christmas, somewhere around in there. I ain't exactly sure.

Q. What was the occasion of your going to Running's, going to work? Do you remember, or do you know?

(Objected to by plaintiff; overruled.)

Q. What I mean by that, Catherine, is this. Was Mrs. Running sick, or was she at the hospital?

A. She was at home, sick.

Q. She had been to the hospital?

A. No. [221]

Q. She had been confined, had she not; didn't she have a child about that time? A. No.

Q. She was sick? A. She was just sick.

Q. Who hired you, Mr. Running or Mrs. Running; who made the arrangement?

A. I don't know just who hired me.

Q. You went to work there about the 5th day of February, did you not? A. I ain't sure.

Q. It was about that time?

A. About that time. Yes.

Q. And you worked for how long?

A. Two weeks.

Q. And it was during that time, was it not, that you met Laura on the street? You were going away from the house, and you met her on the street, and

(Testimony of Catherine Herrington.)

she showed you some money and said she had got it from Wooldridge? A. Yes.

Q. You are positive about the time that you had this conversation with Laura being the time that you were working for Running? A. Yes.

Q. And that couldn't have been anywhere near Christmas time?

A. No. It was after Christmas.

Q. But while you were working at Running's?

A. Yes.

Q. What was the condition of the weather at that time as far as being the really cold part of the winter, or was the [222] snow gone? A. Yes.

Q. Melting about that time? A. Yes.

Q. It was warmer than it had been previous to that? A. Yes, it was warmer.

Q. Did Mr. Roth ever talk this matter over with you before in his office, ask you about these things?

A. Yes.

Q. Did he ask you then in detail just about what time it was? A. Yes.

Q. What did you tell him then?

A. I told him it was about six o'clock in the evening.

Q. You didn't tell him anything, or he didn't ask you anything about the date? A. Yes.

Q. What date was it? What date did you tell him? A. I told him it was after Christmas.

Q. You didn't say how far after Christmas?

A. No, not that I remember.

Q. That is the only time that she ever showed you

(Testimony of Catherine Herrington.)

any money and said it came from Wooldridge?

A. Yes.

Q. And did you say it was two and a half?

A. Yes, I saw it.

Mr. MARQUAM.—That is all.

Mr. ROTH.—That is all.

(Here the Court takes a short recess; jury, after being admonished, in charge of bailiffs; and subsequently return into court, and the defendant and his attorneys and the district attorney are present, and trial resumed.) [223]

Testimony of J. P. Rose, for Plaintiff.

J. P. ROSE, a witness for plaintiff, after being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name? A. J. P. Rose.

Q. What is your occupation?

A. I have a shop here in the town, a repair shop.

Q. How long have you had that repair shop?

A. Well, I have been alone for about five years, but I was with Palmer a couple of years before that.

Q. Are you acquainted with W. H. Wooldridge?

A. I am, sir.

Q. Are you acquainted with Laura Herrington?

A. Yes, sir.

Q. Did you see W. H. Wooldridge on the 15th day of February? A. On the 15th?

Q. Yes. Of this year.

A. I believe I did, yes.

(Testimony of J. P. Rose.)

Q. The day after Valentine's Day? A. Yes.

Q. What time during the day did you first see him on that day?

A. I seen him in the morning, and I seen him in the evening along between 7 and 8 o'clock.

Q. Now, in the morning, about what time was it?

A. Oh, I couldn't hardly say. It was before noon. It might have been early and it might have been towards noon.

Q. At that time did he ask you to do anything for him? A. On the 15th?

Q. Yes. A. No.

Q. Did you see him the day before?

A. Yes, sir. [224]

Q. What time of day did you see him the day before, during the daytime?

A. He was in my place before noon, and in the afternoon, both.

Q. About what time in the forenoon did you see him?

A. I would say along 8 or 9 o'clock, or 10 o'clock maybe. I couldn't state the time. I paid no attention to it.

Q. At that time did he request you to do anything for him?

A. Which? On the day before?

Q. Yes. A. On the 14th?

Q. Yes.

A. No, not to the best of my knowledge he did not.

Q. Did he have any talk with you on the 14th about the Herringtons?

(Testimony of J. P. Rose.)

A. On the 14th I believe he told me that he took down a sack of potatoes there that morning.

Q. Did you at that time or at any time on the 14th buy anything for him?

A. Not on the 14th, no, sir.

Q. Did you on the 15th? A. No, sir.

Q. Did you on the 13th?

A. I think I bought a bottle of whiskey on the 13th.

Q. What did he say to you about buying a bottle of whiskey?

A. He simply said, "Would you mind stepping in and get me a bottle of whiskey. I don't care to go in myself."

Q. What did you say to him?

A. I told him, "Certainly."

Q. And where did you go and get it?

A. McPhee's. [225]

Q. Did you deliver it to him? A. I did.

Q. Did he tell you what he wanted to do with the whiskey?

A. No, I didn't ask him any questions, and he didn't tell me a thing about it at all.

Q. On the 14th during the day when he was in there, did he say anything about the Herrington's?

A. I made the remark myself that I had heard that Mrs. Herrington was on a drunk, and I asked him about the whiskey I gave him, whether it was him, and he said no.

Q. Did he say anything—was the name of Laura Herrington mentioned at any time during the 14th—

(Testimony of J. P. Rose.)

I mean, during the 15th?

A. Not as I have any recollection of. That is, he came to my place in the evening.

Q. But in the morning? During the day?

A. No. I don't remember that there was.

Q. Was there anything said between you and him during the day, or anything said by him upon the subject of him expecting to come there in the evening? A. On the 15th?

Q. Yes.

A. No. I look for him there any time. When he is town he will come to my place I will say five nights out of the seven.

Q. Now, on the evening of the 15th, what time did he come to your shop?

A. Oh, between half-past 7 and 8.

Q. What did he say when he first came in? [226]

A. He spoke about the lights, as he usually did, that I was extravagant in buying electricity, but he said, "I won't turn them out for you tonight."

Q. What did you say?

A. I just passed it off and said nothing.

Q. What did he do?

A. He sat down and talked to me a little bit, as we usually do.

Q. Were the lights turned out, or any of the lights turned out?

A. No. It was earlier—I generally made the rule of turning the light out at 8 o'clock. I make a rule of that myself.

(Testimony of J. P. Rose.)

Q. Was the light in the front room turned out that night?

A. No. Not yet, because it was not 8 o'clock. I think he left before 8 o'clock that night.

Q. Was the light turned out while he was in there, in the front room? A. This is the 15th?

Q. Yes.

A. I couldn't say. I don't think they was, because I don't think—I think he got up and left of his own accord, and I stayed back, if I remember just right.

Q. Did you see Laura Herrington in there on that night, the night of the 15th?

A. No. Not the night of the 15th.

Q. What night was it that you saw Laura Herrington in there, if you saw her in there?

A. It must have been the 14th.

Q. All right. Now, I am talking about the night that you saw Laura Herrington in there. What did he say to you when he came in there that night?
[227]

A. From him, I think the first word he said was: "Well, you are reading again and two big lights on." "Yes," I says, "if it is about 8 o'clock the light in the front room can just as well be turned out," and he went forward and turned it out.

Q. All right. Now, after he turned the light out, then what did he do?

A. He came back into where I was.

Q. Did he sit down?

A. Yes. He stood around, walked around a little bit.

(Testimony of J. P. Rose.)

Q. What were you doing at the time?

A. I was laying on the bunk.

Q. Had you been reading? A. Yes.

Q. All right. Now, after he turned the light out, and he came back there, did he sit down?

A. He did, after stepping around a little bit.

Q. What was the first thing he said after he turned out the light, if you remember?

A. I don't remember. It is a kind of an offhand conversation.

Q. Well, now, just state what was said in there between you and him at that time, as you recollect it now.

A. Well, it is pretty hard to recommend—recollect just what did—was said. I wouldn't like to attempt to go over it.

Q. Give us your best recollection now of what was said there at that time?

A. Well, when he sat down he told me something about delivering a sack of potatoes down at Herrington's in the morning.

Q. Yes, sir?

A. And I asked him, I believe, whether George was there, and [228] he said he was, and the conversation drifted from what those girls was running from cabin to cabin and begging money.

Q. All right. Go ahead and state all he said.

A. I don't remember just anything that he said after that.

Q. You can't tell us now anything that he said.

A. I don't remember that he—just how he did

(Testimony of J. P. Rose.)

answer when I said that.

Q. Did he say anything about the show?

A. He says: "You are not going to the show to-night?" I says, "No. I go Mondays, Wednesdays and Saturdays, and sometimes Friday."

Q. Did he say anything about a key that was hanging on the wall?

A. Well, sir, I haven't the least recollection about any key, as I told the marshal's office when I was making that statement, but they insisted there was something said about a key, but if there was anything said about a key he was standing up at that time, and he was standing facing—well, he was standing right by the table, I think, and if there was any key mentioned, he was right in plain sight of a key that hangs by the looking-glass, and if there was anything said I think it was speaking—but my place is almost lined with keys, old keys, discarded old locks done away with. You can see them anywhere. You don't have to hunt much for keys.

Q. Mr. Rose. You made a sworn statement that same night, did you not, in the marshal's office, as to what took place up there that same night?

A. I did, as near as I can remember.

Q. This was immediatly after; the same night, wasn't it? [229]

A. Yes.

Q. I will ask you if that is your signature, Mr. Rose? (Hands paper to witness.) A. Yes.

Q. I will just call your attention to this part of this statement here (indicating).

(Testimony of J. P. Rose.)

Mr. MARQUAM.—I would like to examine that paper before these questions are asked about it.

Mr. ROTH.—I want to—(interrupted).

WITNESS.—If you would read that—(interrupted).

Mr. MARQUAM.—Just a minute. We object to any examination of this witness on this paper until we have an opportunity to examine it.

Mr. ROTH.—I will pass that question.

Mr. MARQUAM.—We ask the privilege of inspecting this paper at this time. It has been submitted to the witness.

Mr. ROTH.—I have not offered the paper yet.

Mr. MARQUAM.—It is not necessary that you offer it. We are entitled to inspect it.

Mr. ROTH.—We contend under the law that they are not entitled to it until we offer it; then they are entitled to it. I will pass that subject.

Mr. MARQUAM.—It has been submitted to this witness and identified by him.

The COURT.—(To Mr. ROTH.) Do you insist upon the witness answering the question?

Mr. ROTH.—No. I will pass the question for the present.

The COURT.—I didn't understand you.

Mr. MARQUAM.—I ask at this time that the Court direct the District Attorney to submit this paper to us for an [230] inspection.

The COURT.—Your request will be denied at the present time.

Mr. MARQUAM.—We save an exception.

(Testimony of J. P. Rose.)

The COURT.—Whenever there is a question propounded from the paper which he has in his hand and which he shows to the witness, well, then, very well—

Mr. MARQUAM.—He asked the question of the witness in regard to the signature on the paper.

Mr. ROTH.—Q. When you were lying on the couch there, did Wooldridge say anything about Laura Herrington?

Mr. MARQUAM.—We object to that, for it is perfectly apparent that Mr. Roth is asking some questions in regard to a paper purporting to be signed by this witness, and this paper has not been submitted to the witness except for the purpose of identification of his signature. This witness is entitled to read the paper and examine it as fully as he desires before any questions can be asked him concerning it. And we further object to the question because it is a question derived from this paper, and we should have the privilege of inspecting it before such question is asked.

The COURT.—And it is also very apparent that the objection which you present is more or less speculative. I do not know how you expect the Court to rule on assertions and appearances. Objection overruled.

Mr. MARQUAM.—It is apparent to anyone in the courtroom that Mr. Roth, in asking the question, is reading the paper.

(Objection overruled. Defendant excepts. Exception allowed.)

(Testimony of J. P. Rose.)

Mr. MARQUAM.—I will ask you if you are examining this witness now, Mr. Roth, from the contents of this paper?

Mr. ROTH.—I don't have to answer that question. [231]

Mr. MARQUAM.—Does the Court deny me the privilege of asking this question and of having Mr. Roth answer it?

The COURT.—Certainly.

(Defendant excepts. Exception allowed.)

(Question read: "When you were lying on the couch there, did Wooldridge say anything about Laura Herrington?")

A. I believe that while I was laying on the couch there that he told me about that sack of potatoes, and what the conversation drifted to I wouldn't be positive what it did go to.

Mr. ROTH.—That is not an answer to the question at all, if the Court please.

(The Court directs that the question be read again, and the question is read by the reporter to the witness.)

(Mr. Marquam objects to the question and the further answer, upon the grounds already stated, and leading and suggestion. Overruled. Exception asked and allowed.)

The COURT.—Answer the question, Mr. Rose.

A. Well, I don't remember that he did.

The COURT.—Ask your next question.

Mr. ROTH.—Was there anything said, while you were lying there on the bunk, between you and Mr.

(Testimony of J. P. Rose.)

Wooldridge at that time about the grand jury being in session?

(Mr. Marquam objects to the question, and desires to have the record show that Mr. Roth, when asking this question, is reading from this purported statement purporting to be signed by Mr. Rose, and which has been identified by Mr. Rose; that the witness has not had his right extended to him to examine this paper, and that an inspection of this paper has been refused counsel for the defendant.)

The COURT.—That is all on the assumption that he is reading from this paper?

Mr. MARQUAM.—Mr. Roth does not deny it.

The COURT.—Objection overruled. Answer the question (to the witness). (Marquam asks and is given an exception.)

A. The question was: Was there anything said about the grand [232] jury, was it?

Mr. ROTH.—Yes.

A. That came up just after talking about the sack of potatoes delivered, and they going from cabin to cabin and begging money, and I made the remark myself, independent, my own self now—I don't want Mr. Wooldridge to suffer on this—and I said, "I wouldn't have anything to do with them people while the grand jury was in session, because it would be thoroughly investigated. They would take her up in Mr. Roth's room and sweat her, and then to the assistants, and back down to the grand jury room, and they would get it out of her." I made that remark myself, independent.

(Testimony of J. P. Rose.)

Q. Didn't you, before the Grand Jury, under oath, while it was in session here testify while you were lying on the couch in your office, the evening that Laura Herrington came there, that—in substance as follows: Wooldridge asked me about Laura while I was lying on the bed, and said he wanted to—or can you say—or gave you to understand that he wanted to have sexual intercourse with Laura, and you answered and said, “I would not have anything to do with her until after the grand jury got through; that the grand jury would get hold of a thing of that kind and would investigate it” and that you said, “It wouldn't be safe,” and you further said, “In order to get at that, they would take her up to Roth's office and then they would take her to one of the assistants, and then back down to the grand jury room again, and they would sweat her until she would have to tell it.” Did you so testify before the grand jury?

(Marquam objects to that as an attempt to impeach [233] their own witness; as a question apparently based upon a purported statement purporting to be signed by this witness, without the paper having been first submitted to the witness for his perusal; and also the attorneys for the defence have been denied the privilege of inspecting such paper. Objection overruled. Defendant asks and is granted an exception.)

A. Mr. Roth, after I told you in the grand jury, before that, about taking her and getting it out of her, didn't you ask me the question—(interrupted).

(Testimony of J. P. Rose.)

Mr. ROTH.—Now, if the Court pleases—

The COURT.—You answer the question that is now presented to you.

A. I was going to answer it now. I answered the question to the grand jury, didn't I, about taking her from one place to another?

The COURT.—I don't know.

Mr. ROTH.—He has not answered this question.

A. He asked me that question—

The COURT—Did you or did you not—well no. You may answer the question which has been asked you.

Mr. ROTH.—Please read the question again.

(Question read as follows. "Didn't you before the grand jury, under oath, while it was in session here testify that while you were lying on the couch in your office the evening that Laura Herrington came there, that—in substance as follows: Wooldridge asked me about Laura while I was lying on the bed, and said he wanted to—or can you say—that he wanted to have sexual intercourse with Laura, and you answered and said, 'I would not have anything to do with her until after the grand jury got through; that the grand jury would get hold of a thing of that kind and would investigate it,' and that you said, 'It wouldn't be safe,' and that you further said, 'In order to get at that, they would take her up to Roth's office and then they would take her to one of the assistants, and then back down to the grand jury room again, and they would sweat her until she

(Testimony of J. P. Rose.)

would have to tell it.' Did you so testify before the grand jury?")

Mr. MARQUAM.—There is a mistake in that question the way it was read, because Mr. Roth, during this question—this remark [234] was made, "cause you to understand."

Mr. ROTH.—Yes.

The COURT.—Q. Did you or did you not so testify?

A. There is part of that question which I did answer, but the sexual intercourse I did not. I said to the grand jury about taking her to the grand jury and back again, but Wooldridge never said to me that he intended to have intercourse or would have it.

Mr. ROTH.—You are sure of that?

Mr. MARQUAM.—I would like to have, if there is a mistake, and Mr. Roth says there was a mistake, I would like to have the correct question in the reporter's notes.

(Question read as originally put. See 2d page preceding this page.)

A. No. The sexual intercourse I didn't; but the grand jury, about that, that came up about going from cabin to cabin and a-begging money. That is how I came to say that.

Mr. ROTH.—Q. You say you told the grand jury under oath that the conversation between you and Wooldridge was to the effect that those girls were going around from cabin to cabin begging money?

A. To the best of my recollection.

Q. Did you also testify before the grand jury in

(Testimony of J. P. Rose.)

substance as follows: “He,” referring to Mr. W. M. Wooldridge “saw a key on the wall and asked me if that was the key to the building, and I told him that that was the front door key?”

(Defendant objects to the question as not proper direct examination, an attempt to impeach their own witness; for the further reason that counsel in putting this question is reading apparently, in the presence of the Court and in view of the jury, and in view of counsel, and does not deny the fact that he is reading from this statement purported [235] to be signed by Mr. Rose at some previous time, without submitting this paper to Mr. Rose for his inspection further than to view the signature and identify the signature, and also that counsel have been refused by the Court the privilege of inspecting this paper before this witness is questioned concerning it. Objection is overruled. Mr. Marquam makes following request: We want at this time the record to show—to request the Court, if there is any doubt about it in the Court’s mind as to whether Mr. Roth, the District Attorney, is examining this witness from this purported statement signed by him, to ascertain that fact by a question to Mr. Roth before permitting him to proceed further. The Court: There is no doubt in the Court’s mind as to the law and procedure in this case. You (to witness) may answer the question.

WITNESS.—I forgot just how it was worded.

Q. (Question read)

A. If Mr. Wooldridge— (interrupted).

(Testimony of J. P. Rose.)

The COURT.—The question is: Did you or did you not so testify?

A. I testified something about a key.

Mr ROTH.—Q. Did you or did not you testify before the grand jury as stated in this question?

A. I think that I said if there was anything said about a key, it was that I told him it was a key to the front door, and if he asked me any questions; and I told them that I had a very faint recollection, none at all about any key being spoken of; and I told them the same in the office down below.

Q. Was there anything said by Mr. Wooldridge at that time—the time that you had this talk in your office the same evening that Laura Herrington came there about the time about the clock?

(Defendant objects as leading, suggestive, no basis for impeachment; that counsel for the government in *ansing* the question is reading from the statement purported to be signed by the witness, which paper was submitted to him for indentification of his signature, and counsel for the defense have been refused inspection of said paper. Objection overruled. Defendant excepts. Exception allowed.)

A. He asked me if the clock was right.

Q. What did you say? A. Seven minutes fast.
[236]

Q. You stated that this was your signature to this paper. Now did you swear to it? A. Yes.

Q. Before whom?

(Objection by defendant. Discussion. Paper

(Testimony of J. P. Rose.)

handed to witness for inspection.)

A. Yes. That is my signature.

Q. Did you swear to that?

(Defendant objects as incompetent, irrelevant and immaterial. Objection overruled. Defendant excepts. Exception allowed.)

A. I swore to the best of my knowledge to this paper. When I came to that I says, "To the best of my knowledge." That is the way I swore.

Q. How long was it after the conversation that you had with Wooldridge that you signed that paper?

(Witness after inspecting paper, hands same to Mr. Marquam.)

Q. How long was it after you had this talk with Wooldridge that evening at your place before you signed this document that has just been shown to you?

A. I guess—the talk was along about eight o'clock, and in that document must have been signed along near ten o'clock.

Q. The same evening? A. Yes.

(Noon recess untill 2 P. M. Jury, after being admonished, in charge of bailiffs. After recess, at 2 P. M. jury, defendant and his attorney's and District Attorney present and trial proceeds.)

Mr. ROTH.—We desire to offer this written instrument in evidence, and identified by the witness as having been signed by him.

(Paper marked as Plaintiff's Identification 1.)

We offer Plaintiff's Identification 1 in evidence.

(Testimony of J. P. Rose.)

(Objected to by defendant; that questions we asked the witness concerning the paper without it having first been submitted to him for inspection; incompetent, irrelevant and immaterial. No proper foundation laid to impeach. Overruled. Exception allowed. Mr. Roth reads same.) [237]

Plaintiff's Exhibit No. 1—Statement of J. P. Rose.

“Wooldridge came in, said, ‘Do you read all the time?’ Then he got up and said, ‘I think you are burning a good deal of light.’ I remarked, ‘It is eight o’clock,’ and he went out and shut the lights off in the front room. He asked me if I was going to the show, and I said, ‘no.’ He saw key on the wall and asked me if that was the key to the building and I told him that that was the front door key. When Laura Herrington came in she and Wooldridge talked by the heater. Wooldridge was standing between me and her and they said a few words which I did not understand. He got up and went out, and then I went out for I did not want to be left alone with her. Then he, Wooldridge, went back and talked to her in the back room for a few seconds, and when he came back out, she turned out the light. Wooldridge asked me about Laura while I was lying in the bed and said he wanted to screw her, or words that gave me to understand that he wanted to have sexual intercourse with her. I answered; ‘I would not have anything to do with her until after the grand jury get through;’ I said; ‘The grand jury would get hold of a thing of that kind and would investigate it.’ I said, ‘It wouldn’t

(Testimony of J. P. Rose.)

be safe.' I said, 'In order to get at that, they would take her up to Roth's office, and then they would take her to one of the assistants, and then back down to the grand jury room again, and they would sweat her until she would have to tell it.' He asked me if that clock wasn't fast, and I said, 'About seven minutes.' When I went back into the house, I told her to come on out; that somebody was watching her. I recognized who they were, and told him so then. I turned and went back in and got the girl.

(Signed) J. P. ROSE. [238]

Subscribed and sworn to before me as J. P. Rose's voluntary statement by J. P. Rose himself.

[Notarial Seal]

FRANK B. HALL,

Notary Public in and for the Territory of Alaska.

My Commission expires October 25, 1919."

Upon the second part or page, the initials "G. B." appear and underneath it "F. B. Hall, John C. Wood" and "P. McMullen." On the first page, the identification "P. McMullen, John C. Wood, F. B. Hall" and the initials "G. B." and the seal—notarial seal also attached to the first page.

Mr. ROTH.—You may cross-examine.

Cross-examination

(By Mr. MARQUAM.)

Q. Mr. Rose. Did you write this statement?

(Pltff's Exhibit 1.) A. No, sir.

Q. You signed it did you? A. I did.

Q. Did you say that was your signature?

A. Yes, sir.

(Testimony of J. P. Rose.)

Q. Where were you when you did that?

A. In the marshal's office.

Q. Did you ever read that? A. No.

Q. Who wrote it? A. Miller.

Q. What were you doing down at the marshal's office then?

A. They sent down for me to come up; they wanted to talk to me.

Q. When was that? [239]

A. The same night that Laura Herrington was there, the 14th of February.

Q. Was Laura Herrington there at that time?

A. No.

Q. What time of day or night was it?

A. It was after they had come down and took Laura and Wooldridge and myself up here, and I went back again—I went back home, and they came down after awhile and I came up.

Q. Well, did you make the statements or all the statements contained in this paper?

A. Well, they don't read just exactly as I meant them for, anyway.

Q. You didn't write it? A. No.

Q. Did you dictate it?

A. Miller just asked me questions along.

Q. And then when he would ask you the questions, what would you do?

A. I would answer him just the best I could remember.

Q. There are no questions written down here. You have heard this read. A. Yes, I did.

(Testimony of J. P. Rose.)

Q. No questions written down here. He just wrote the answers that you gave. Are they the ones that are written down here? A. How is that?

Q. Are the answers that you gave to those questions he might have asked you written down here; are these the answers?

A. I see one place there that I didn't know that was on that paper. I don't think that I ever said that Wooldridge wanted to have sexual intercourse with Laura Herrington. [240]

Q. No matter what you said at that time and under those circumstances, what is the fact and what is the truth. Did he ever tell you that?

A. Never in his life.

Q. Never in his life?

A. Never in his life as I remember.

Q. Were there any threats made to you at the time you were down to the marshal's office, by any of the marshals?

A. Berg. He says; "You are lying" "You are lying." And that was on that key question.

Q. Just describe to the jury his attitude and what he did when he said that to you.

A. Well I — (interrupted.)

Q. As to whether or not it was threatening or otherwise.

A. It looked to me like it was a kind of a bluff.

Q. A kind of a bluff? A. Yes.

Q. How many people where there at the time?

A. There was no one there but deputy Marshals

(Testimony of J. P. Rose.)

Miller, and Pete McMullen, and Berg, and Frank Hall I believe.

Q. Did they bring you down themselves from your place?

A. Pete McMullen came down and told me that Joe would like to talk to me if I would come up.

Q. Did you go up with him?

A. I did. He was going to go, and I said, "Wait, and I will go up with you," and he says, "You don't have to go with me." I says, "It is all right. I will go up with you."

Q. I understand you to say, notwithstanding what it was that Miller wrote down here and that you signed without reading it, that Wooldridge never made such a statement to you. [241]

A. No.

Q. In his life? A. Wooldridge never did.

Q. You were sworn to this? A. Yes, sir.

Q. By Hall? A. By Frank Hall.

Q. Well, what did Wooldridge say to you when he first came into this place, Mr. Rose?

A. He said, "You are reading again," I believe, and then I told him I was getting so that I would read every time I stopped, or some such a thing as that.

Q. Were you expecting Wooldridge particularly upon that occasion?

A. If they had come to me and told me that Wooldridge wouldn't have been there, I would have to tell them that he would.

Q. State what Wooldridge's habits have been in

(Testimony of J. P. Rose.)

regard to dropping into your place; on what occasions; for what purpose?

A. Wooldridge is a man that never passed my door unless he dropped in. He always calls in in the evening, I would say five nights out of seven, and comes back into the back part of the room and sits down a few minutes, and then he will get up and go about his business.

Q. Did he at any time that he has been in your place—you said generally that he had never made any such statement to you that he wanted to have sexual intercourse with this girl—did he at any time in your place ever talk to you or ever say to you that he wanted to, or had had sexual intercourse with this girl? [242] A. No.

Q. How does this statement get in this paper?

A. That is what I don't understand. I made the remark at the time that he never said to me that he wanted to have sexual intercourse with her at all.

Q. Just go ahead and tell this jury, notwithstanding what Miller wrote in this paper, just exactly what occurred there at the time that Wooldridge came in this evening; what time it was, what he said, what you said, and what was done?

A. When he first came in he says—this will be as near as I can remember.

Q. Before you start in, let me ask you if this is not so: Didn't Wooldridge, as he came through the front part of the shop to where you were, and as he was coming through say: "You are pretty extravagant. Burning—" (interrupted).

(Testimony of J. P. Rose.)

A. That was just about the time he came through the opening there. He says, "You are very extravagant," I think, "Two big lights a going."

Q. Then you suggested that it might be turned out, and he turned it out?

A. I suggested about eight o'clock—(interrupted).

The COURT.—Answer the third question before.

Mr. MARQUAM.—What is that?

The COURT.—Before you answered it, you were asked two more questions. Answer the question which was propounded to you. Read the question.

(Question read as follows: "Just go ahead and tell this jury, notwithstanding what Miller wrote in this paper, just exactly what occurred there at the time that Wooldridge came in this evening; what time it was, what he said, what you said, and what was done.")

A. As he came in the opening, he says, "Well, you are reading [243] again," and he says, "I think you are pretty extravagant, two big lights a-going." I says, "Yes. The front light might as well be turned out. It is about eight o'clock." He just turned right around and he says, "I'll turn it out."

Q. All right. Go ahead.

A. And he came back in, and he says, "Is that clock right?" I said, "No. It is about seven minutes fast," and he—

Q. During this time what were you doing?

A. I was laying on the bunk.

Q. Lying on the bed?

(Testimony of J. P. Rose.)

A. And he walked on ahead, passed the bunk like, where I couldn't see him, and we talked a half a minute. I don't know just exactly what the conversation was, and he got his chair then and sat down alongside of the bed.

Q. How long did he stay there?

A. Oh, until Laura Herrington came in.

Q. About how long was that?

A. Oh, it wouldn't be ten minutes I wouldn't think. It was a very short time.

Q. In the neighborhood of that time? A. Yes.

Q. In the neighborhood of ten minutes?

A. Yes.

Q. What were you talking about?

A. I think we were talking about him delivering a sack of potatoes.

Q. Did he tell you the occurrences and incidents that had happened down at Herrington's house the night before? [244]

A. Not any more than delivering them a sack of potatoes that morning.

Q. Did he tell you about any of the circumstances that happened during that day or in the evening down there at the house? A. The night before?

Q. That happened the night before?

A. Yes. The night before.

Q. Did he tell you what happened down there the night before?

A. Yes. He told me he stepped in and asked Laura where George was, and she said he was up town—or upstairs, I mean. I take that back.

(Testimony of J. P. Rose.)

Q. Upstairs? A. Yes. Upstairs.

Q. Did he go on and tell you then of her telling somebody else— A. Yes.

Q. —that he was not upstairs, but was down town? A. Yes.

Q. Was that all discussed—what happened up there, was that discussed between you and Wooldridge at that time in your shop?

A. Just to a very small—we were just on that now when Laura came in.

Q. You stated in your direct examination, Mr. Rose, that you said to Wooldridge something about your—you would not have anything to do with these girls while the grand jury was in session, or something to that effect? You remember that testimony? A. Yes.

Q. Just what was that?

A. Well, we were talking about the girls running so wild from cabin to cabin a-begging money. [245]

Q. How did you happen—how did that conversation happen to turn on that point?

A. It just happened to come out of him being down there and two marshals walking in while he was sitting there.

Q. Down at his house? A. Down at his house.

Q. Was this fact of the girls going from cabin to cabin around town here and soliciting money—was that known to you from general knowledge, hearsay?

(Objected to by plaintiff's attorney. Overruled.)

Q. Was that known to you by hearsay, from gen-

(Testimony of J. P. Rose.)

eral reputation at least? A. From experience.

Q. From experience?

A. From experience. Yes, sir.

Q. And in any way did you know it also by hearsay and reputation?

A. Of course, I knowed a great deal of it by experience and by hearsay.

Q. By hearsay? A. Yes. Certainly.

Q. That was the subject of conversation, then, between you and Wooldridge?

A. There had just been a word or two said, something of that kind.

Q. What was it that had been said during the time that you and Wooldridge were in there that led up to you making this remark about the grand jury?

A. How they was a-going to cabins and soliciting money.

Q. Let me ask you this: Was there a word said by Mr. Wooldridge from the time he came in there until he went out that caused [246] you to make that remark or direct it to him, that is, apply it to him, I mean?

A. No. I think I was telling him. I think I was telling him.

Q. What?

A. About this, after he told me he had been down there, and was down there the night before and she had told him that her father was upstairs.

Q. What I mean to say, Mr. Rose, was there anything said by Mr. Wooldridge about his intending to, or wanting to, or trying to have anything to do

(Testimony of J. P. Rose.)

with this girl Laura Herrington that led you to make that remark? A. No. No. No.

Q. Nothing?

A. No. Not in my recollection at all.

Q. Are you willing to say positively to this jury now that there was nothing said by Mr. Wooldridge that caused you to make that remark, as applying it to him?

A. I don't think that Wooldridge made any such remarks or banters to me whatever, to the best of my knowledge, that he wanted to do anything in my place at all.

Q. You are satisfied of that? A. I am.

Q. After you had been sitting there—or he had been sitting there and talking with you for a period of about ten minutes, or in that neighborhood, I understood you to say that Laura Herrington came in?

A. Yes, sir.

Q. All right. Just tell this jury now, when she came in what was done and what was said.

A. I says to Mr. Wooldridge, “Who is that coming through the door”? [247]

Q. You were still lying on the bed, were you?

A. I was still laying on the bed.

Q. Where was he standing or sitting?

A. He was sitting there. He couldn't see from where he was sitting at all, and he kind of turned over this way (showing) and then he got up and stepped to the opening and she came right up to him and he addressed her and she addressed him and just as they came together, I says, “Is it

(Testimony of J. P. Rose.)

Laura," just at the moment that they were speaking.

Q. What did they say?

A. I didn't catch what they said, by my speaking myself I think is the reason.

Q. Was it a conversation or just a remark?

A. Just a remark, and only a word from each, or such a matter.

Q. Go ahead and tell the jury just what else happened.

A. Well, Wooldridge tied his cap in under his chin and started to walk out, and I jumped right up off of the bunk and stepped right out of the room, and he says to me when I came up to where he was, he says, "She says somebody is following her." "Well," I says, "I will put on my coat and we will turn the light out and we will see who it is." And he stepped back—he didn't go out of my sight at all, and he says to her, "Mr. Rose said to turn the light out," and he turned right around and came out. He wasn't out of my sight at all. And I think, if I remember right, that I went back into the place where she was and got my hat and walked right out, and Wooldridge walked out ahead of me, out of the shop ahead of me, and I just stepped outside of the door where I could see up—I didn't step on the sidewalk even. [248] I didn't pull the door to—and I see Frank Hall and another marshal on the corner there at McPhee's, and I turned right around and as I entered the door I says, "You come out of there," and turned the light on again, and

(Testimony of J. P. Rose.)

walked right back and told her to come on out.

Q. Directed your remark to who?

A. Laura Herrington.

Q. Laura Herrington?

A. And I went right back and went in the room where she was. There is an opening about six feet or seven, no curtain or anything over it, and I says, "You come out of there." And she says, "When will I come back"? I says, "You can come back and see me any time." And she came out to the front.

Q. Well, what happened at that time?

A. Why, Wooldridge and Frank Hall came in.

Q. What did they say, if anything?

A. They didn't say anything until Miller came in. Miller he came in and he says, "What are you two men doing in this house with this young girl, and the lights turned out?" And he addressed Wooldridge. He didn't address me. Wooldridge said, "She said somebody was following her, and we were going to see who it was." And how far Wooldridge went from the door, I couldn't say.

Q. What did you do?

A. I turned back and went in and brought her out to the front and when the marshals came in I had a hundred-power lamp there and just turned it on—the big lamp.

Q. Was that the one that was burning first?

A. No. [249]

Q. Well, did they say anything to you, or did you say anything to them?

(Testimony of J. P. Rose.)

A. Miller asked her what we were a-doing there—asked Mr. Wooldridge what we were a-doing there in that house with that young girl and the lights turned out, and Wooldridge he told him that she said there was somebody following her, and we were going to see who it was.

Q. Let me ask you if this circumstance occurred: Did Wooldridge at any time that he was there ask you to go out of the house, get away from there?

A. No, sir.

Q. Let me ask you if this occurred: Did you—did Wooldridge at any time prior to the time that the marshals arrived there say—start to go to the front door and say, “Well, I am going out,” and you said to him, “Aren’t you going to take the girl with you?” and he replied, “No. I am going to leave her for you.” Did any such conversation as that occur?

A. By no means.

Q. No such conversation as that occurred.

A. No. That is the first time I ever heard that.

Q. I understand you to say, Mr. Rose, that you have given now in substance or practically what occurred in the shop all the time that you were in there when Wooldridge or the girl were there, that is, practically. A. Yes.

Q. You have covered it, except perhaps in some details?

A. Something that might have slipped my memory.

Q. Was there anything said there, Mr. Rose,

(Testimony of J. P. Rose.)

about any keys, that you remember distinctly?
[250]

A. Well, that key business, I remember, I got from Berg, the marshal.

Q. How did you get it from Berg, the marshal?

A. Berg he insisted that there was a key spoken of. I haven't the least remembrance of it at all, and I will say that Wooldridge didn't ask me for any key.

Q. He didn't ask you for any key.

A. He did not ask me for any key, for as I—
(interrupted).

Q. Your answer to Mr. Roth this morning was simply—you were simply guessing that if anything was said of such a thing you have not the slightest recollection of it?

A. That is the way I aim to put it as I put it now, and Berg was the man that insisted that there was some key spoken about, and told me he was in the hallway there at the same time, and I told him that that key business was a blank in my mind altogether, but I says, "If there was a key spoken about, it must be that key up there."

Q. That was just a guess upon your part—

A. That was simply a guess.

Q. —if anything was said. As I understand you, you have no recollection—

A. I have no recollection of the key, only by Berg speaking himself, and I told them so.

Q. That is what you told the marshal, told Berg?

A. I told them in the grand jury room the same way; I had no recollection of a key being spoken

(Testimony of J. P. Rose.)

about, only they insisted that they had heard a key mentioned. But there are so many keys around there that you couldn't tell what a man would be asking unless you could see him.

Q. And you are satisfied and positive upon this part; that Mr. [251] Wooldridge never asked you for any key to your place?

A. He never asked me for no key at that time or no other time.

Q. He asked you something about whether you were going to the picture show, you said.

A. Yes. He asked me if I was going to the picture show.

Q. Was that just a casual question?

A. Oh, it certainly was.

Q. Are you in the habit of going to picture shows considerably?

A. Yes, I go three times and maybe four times a week.

Q. Now, when you went down to the marshal's office, did one of the marshals say to you in substance, and they insisted, that there was some talk about a key and Wooldridge was to get a key, "Now, if that key"—when you told them that you had a key of your house which belonged to your door, that you said, "If that key is not there now, Wooldridge has got it." Did you say something of that sort?

A. When they were talking about the key, they asked me if the key is there. I says, "Now, you have got me." That is just the words I said, and I said, "I will tell you. I will go down to my shop, and if

(Testimony of J. P. Rose.)

that key is not there, Wooldridge has got it," because it was there and a place for it. They said he had been there. Wooldridge had not been in that part of the shop since.

Q. What did you do when you were down there?

A. I walked in and turned the light on, and there was some loose tools over on the bench, and I commenced to hang them up, and in came the marshal, and he walked back—

Q. Was the key there?

A. The key was hanging right in its place. [252]

Q. Right where you always keep it?

A. It is hanging there to-day.

Q. Is that where you always keep it?

A. Where I always keep it. And the reason I keep it there; that if I would happen to drop my bunch of keys, I can go down cellar in the saloon and come up into my place from the cellar and get my key and let myself out.

Q. Has Wooldridge ever had that key? A. No.

Q. —In his possession?

A. No man has ever had it. Yes, I will take that back. Tom Blalock had it to watch my woodpile. I said no man, but Tom Blalock had it.

Q. When was that?

A. When he was the night patrolman.

Q. When he was on the police force?

A. Yes. They were stealing my wood, and I gave it to Tom.

Q. I don't care about that, Mr. Rose. Well, after you had told him that you were not going to the pic-

(Testimony of J. P. Rose.)

ture show that night, did he suggest that you go out, go to the picture show. A. No.

Q. Did he suggest that you go and take a walk, or anything of that kind? A. No.

Q. Did he say anything about intending to meet the Herrington girl, or anybody else, in your place?

A. He had not said a word to me about the Herrington girl coming there at all.

Q. Not a word? [253]

A. Not a word in any way that—(interrupted).

Q. Was there anything happened there, Mr. Rose, that night which was out of the ordinary of the happenings that occurred there when he had dropped in on other occasions? A. Oh, no. Nothing.

Q. I understood you to say that when they were questioning you in the marshal's office about what occurred there, that Berg, at least upon one occasion, said, "You are lying." A. Yes.

Q. Well, I want you to tell this jury whether it was done in a calm way or in a threatening way?

A. Well, it looked to me like it was a kind of a threatening attitude.

Q. Who was asking you questions? A. Miller.

Q. Miller alone? A. Miller alone.

Q. What did Berg have to do with it, then?

A. He would interrupt me.

Q. He would interrupt you? A. Yes.

Q. Did he interrupt you more than once?

A. About twice, I think.

Q. Told you you were lying twice? A. Yes.

Q. And insisted—did he say he had heard you or

(Testimony of J. P. Rose.)

Wooldridge talking about a key?

A. He insisted that I—that there was something said about a key.

Q. Did he tell you what it was? [254]

A. No.

Q. He told you you were lying, though, when you told him you had no remembrance of it.

A. And when this thing—when Miller had got through writing, he said to Berg, “Do you want to ask him a question?” and he said, “No,” he said, “That is about so.”

Q. You say that this all occurred on the 15th?

A. On the night of the 14th.

Q. On the night of the 14th?

A. I think it was on the 14th.

Q. That you—or the 13th or some day, whatever it was, you didn’t make it clear, that Wooldridge asked you to buy him a bottle of whiskey.

A. That was on Monday.

Q. What date would that be?

A. That was the 13th, I think. It was the night before he delivered the sack of potatoes. You can get it positively that way.

Q. It was the night before he delivered the sack of potatoes.

A. I think he delivered the sack of potatoes on the 14th.

Q. Whatever the date was upon which that delivery was made, you are satisfied it was the night before? A. Yes.

Q. What makes you think so?

(Testimony of J. P. Rose.)

A. Well, I heard the next morning—I ain't sure but what old man Cameron told me something about it—that the old lady Herrington—or it might have been some of the Morencys, because I wouldn't be positive which of them—that Mrs. Herrington was on a drunk.

Q. Was that an uncommon thing to hear? [255]

Mr. ROTH.—We object.

A. No, no.

Mr. MARQUAM.—Q. It didn't strike you as anything peculiar, the fact that she had been drinking, and drunk?

A. I asked Wooldridge when he came in if he gave old lady Herrington that whiskey he got last night.

Q. What did he say?

A. No. He said he had his whiskey yet.

Q. What kind of a bottle of whiskey was it that you purchased for Mr. Wooldridge?

A. A four-bit bottle.

Q. You mean a flask? A. Yes, a flask.

Q. What size flask would that be?

A. Half a pint it would be, or near that.

Q. Let me ask you if Deputy Marshal Berg—or, let me ask you before that: What kind of a flask was it, describe it to this jury.

A. Which? That I bought for Wooldridge?

Q. Yes, that you bought for Wooldridge.

A. Just a common half-pint bottle, whiskey bottle.

Q. What was the color of the bottle?

A. Well, I couldn't just exactly say with the whiskey in it. I never looked at it at all, but if it was

(Testimony of J. P. Rose.)

empty it might be a nice clear bottle.

Q. Let me ask you if, a day or two afterwards—I can't fix the day any closer than that—that George Berg, the deputy marshal, didn't come into your place with a flask in his hand which was brown in color—the bottle itself, not due to the whiskey that was in it—being empty—and ask you [256] if that was not the bottle that you bought for Wooldridge.

A. He came in. I was in the back room at the time.

(Objected to as irrelevant, incompetent and immaterial, and not cross-examination. Sustained. Defendant asks and is given an exception.)

Q. What marshal was it, Mr. Rose, that went down with you to see whether or not the key to the front door was hanging in its proper place?

A. I think John Woods and Pete McMullen.

Q. You think John Woods and Pete McMullen.

A. I know John Woods was, because he had a revolver there at the time getting repaired.

Q. When was that with reference to the time that you were down in the marshal's office?

A. That was just when I left the marshal's office.

Q. When you left the marshal's office they went right up with you.

A. That is another matter. I told them we would go down together, but they said they would be down there right away.

Mr. MARQUAM.—That is all.

Mr. ROTH.—Nothing further. [257]

Testimony of George Berg, for Plaintiff.

GEORGE BERG, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name? A. George Berg.

Q. What official position, if any, do you hold?

A. Deputy United States marshal.

Q. Are you acquainted with J. P. Rose?

A. Yes, sir.

Q. Are you acquainted with Laura Herrington?

A. Yes, sir.

Q. Did you go to the place of business of J. P. Rose during the month of February for the purpose of hearing what might transpire? A. Yes, sir.

Q. What date was that?

A. On the fifteenth of February.

Q. Where did you go, Mr. Berg?

A. Well, I went in through the grocery store here on Second Avenue.

Q. McDermott's?

A. McDermott's. Into the hallway right back of McDermott's store.

Q. Just describe that place there.

A. There is a hallway the full length of the building, or the width of the building, probably four feet or five feet wide, and it is boarded up with inch boards, twelve-inch boards, a foot wide, and the boards are in places dried out and [258] shrunken so they are an inch or an inch and a half apart, and it is lined on the inside with paper and lining.

Q. Did you make any opening so you could see

(Testimony of George Berg.)

into Rose's apartments? A. I did.

Q. What kind of an opening did you make?

A. I cut the lining with a knife.

Q. Could you see in? A. Yes, sir.

Q. Was anyone with you there? A. Yes, sir.

Q. Who? A. John Wood.

Q. Where was he stationed with reference to yourself?

A. He was at my right, probably six feet from me.

Q. Was he in as good a position to hear as you?

A. Well, not exactly, no. He was farther away.

Q. Was he in a position where he could see anything in the room?

A. No. He couldn't see because he had no knife. He could hear things, but he couldn't see, because he had no knife to make an opening.

Mr. MARQUAM.—Q. Just a moment. Just tell what you know yourself. You don't know whether he could hear or did hear. You're just guessing at that. A. He told me so.

Q. You shouldn't be telling what somebody told you. A. All right.

Mr. ROTH.—Q. At any rate, what time did you get there and make that opening so you could look in? [259]

A. It was about seven-fifteen or seven-twenty, somewhere along in there.

Q. Did you see Mr. Wooldridge come into Mr. Rose's apartments? A. I did.

Q. What time did he come in?

A. It was before eight o'clock. I couldn't say ex-

(Testimony of George Berg.)

actly. Some time after I had been there, probably fifteen or twenty minutes.

Q. Could you see Mr. Rose when you looked through that opening? A. Yes, sir.

Q. Where was he? A. He was lying on the bed.

Q. Where you could see him?

A. Just practically across from me.

Q. How far from you?

A. I judge about six or seven feet, probably eight feet. I couldn't say exactly.

Q. What did Wooldridge do when he came in?

A. What did he do?

Q. Yes. What did he say the first thing?

A. The first thing he said, "You have too much light here, Rose."

Q. What did Rose say?

A. He said something to him about turning it out, and he turned right around and went right out in front and turned the front light out.

Q. You saw the light go out, did you?

A. Yes, sir.

Q. Then what did Wooldridge do after he turned out that light?

A. He came back and commenced to talk to Rose.

[260]

Q. Did he stand up or sit down?

A. He stood up at first.

Q. Now, you go ahead and tell this jury everything that you saw and heard in there from that time on.

A. Yes. Well, the first thing that Wooldridge said when he came in, he said, "You have got too much

(Testimony of George Berg.)

light in this place," and he turned right around and went out and turned the light out, that is, out in front in the workshop. Then he came back and started in a conversation with Rose in reference to the picture show, talked about the picture show, and Rose told him that he had been to the picture show last Friday, I think. And they talked on in that way for several minutes, and finally they commenced to talk in a low tone, and I couldn't hear all the conversation.

Q. Just tell what you did hear.

A. I heard them make a reference to a key, something about a key.

Q. Yes?

A. Then they brought up—(interrupted).

Q. What did you hear them say about the key?

A. I heard them speak of a key, and Rose said that that was a key to the front door.

Q. Go ahead.

A. And so they started on to talk and brought up Laura Herrington's name.

Q. Who brought up her name? A. Wooldridge.

Q. All right. Now, go ahead and state what he said. [261]

A. Then they commenced to talk in whispers, in a lower tone, and I couldn't hear all that was said, but now and then I could get a little of what was said in substance.

(Defendant objects to the witness telling his own version from what he did hear when it is perfectly apparent that he did not hear the conversation.)

The COURT.—You tell the jury as nearly as you

(Testimony of George Berg.)

can what you heard. A. Yes, sir.

Mr. ROTH.—Yes.

A. They talked about Laura Herrington and in substance it was in reference to Wooldridge wanted to screw Laura Herrington. That was all there was to it.

(Defendant moves to strike the answer.)

The COURT.—That portion of the answer may be stricken. You may tell the jury as nearly as you can the words you heard used, the conversation between these two men.

Mr. ROTH.—Yes.

A. I didn't hear all their conversation, you see.

Mr. ROTH.—Well what did you hear?

A. That he wanted to do business with Laura Herrington.

Q. What did Wooldridge say?

(Defendant moves that the answer be stricken for the reason that it does not purport to be the conversation or statements, but merely his conclusion that he arrives at from what was said. Motion denied. Defendant excepts. Exception allowed.)

Q. What did Wooldridge say to that?

A. Well, he said in substance that he wanted to do business with Laura Herrington, and they talked on in a low tone. I couldn't hear everything that was said. And finally Rose spoke up and he said, "I wouldn't"—he said something [262] about the grand jury being in session, and that, "I would wait because the grand jury is in session and you are liable to get into trouble," or words to that effect, I

(Testimony of George Berg.)

don't remember exactly. And they talked on that way for sometime in a low tone.

Q. Do you remember anything further that was said as to what would happen, what they would do with Laura?

A. Well he said, "If the grand jury get hold of her" that they were liable to question her, and they would get something on him, or something to that effect, I don't remember exactly.

Q. Go ahead.

A. And they talked on that way in a low tone, and I couldn't get all the conversation. Finally, while they were whispering and talking there, Laura Her-
rington came in.

Q. All right. Did you see her?

A. Yes, sir. I saw her when she passed between Mr. Rose and me, and went to the back of the room.

Q. All right.

A. And one of the two of them said something. I don't know what was said, I don't remember now. And Mr. Rose spoke up and said, "Well Laura can come here and see me any time she wants to." Those are the very words he said. And they talked to her and jollied her up a little.

Q. Go ahead now and tell—(interrupted).

A. And directly Rose and Wooldridge went out, went out into the front room. I couldn't see them, but I know they went out, and they talked there awhile but I couldn't hear what they said there, and they came on back and were probably in there a few

(Testimony of George Berg.)

minutes in there, and went outside and left [263] the girl there.

Q. Who came back?

A. Why Wooldridge, Wooldridge and Rose.

Q. Did you notice anything with reference to the light in the back room?

A. The light was on until after they came back and then the light was put out.

Q. Did you hear anything said about the putting out of the light?

A. I can't recall now whether there was something said, but I know the light was put out.

Q. When that light was put out was the whole place in darkness?

A. Yes, sir. That was the light in the back room.

Q. The light in the back room and the front room too? A. Yes, sir. It was all in darkness.

Q. Well did you hear anything further after the lights were out and it was dark in there?

A. After they went out, you see, I knew that Laura Herrington was still in there because I could hear her, you see, and someone came in after the lights were out. And they were out a short time and called her out.

Q. Did you hear what he said to her?

A. No. He said, "Come on Laura" or something like that, called her out and they went on out.

Q. Now after that, what did you do?

A. I stayed there a little while and directly I was called out by Mr. Miller.

Q. And where did you go?

(Testimony of George Berg.)

A. I went down to the office here. [264]

Q. I will show you a document that is marked Plaintiff's Exhibit One, and ask you to state whether or not you recognize any of the initials at the bottom of the two pages there. A. Yes, sir.

Q. There is an initial "G. B." there. Who's initials are those? A. That is mine.

Q. Did you write that? A. Yes, sir.

Q. On both pages? A. Yes, sir.

Q. Were you present when this document was written up? A. I was.

Q. Who wrote it? A. Mr. Miller.

Q. Chief Deputy Marshal? A. Yes, sir.

Q. Just state how that was written at the time it was written.

A. Well it was written in sections, that is, a little at a time as he made the statement.

Q. As who made the statement?

A. Mr. Rose. As he made the statement, it was taken down and read, then he was asked if that was correct and he said, "Yes"; if that was what he had to say and he said, "Yes." Then he would go on with the whole tale and there would be some of it written and he was asked if that was what he wanted to say, and he said that was it. And after it was finally completed it was handed to him and asked him to read it and he said he hadn't his glasses with him and he couldn't read it. So [265] Mr. Miller handed it to Frank Hall and had Frank read it to him, and asked him if that was what he wanted to say, and he said yes, that that was true.

(Testimony of George Berg.)

Q. Did he sign it? A. He did.

Q. Did he swear to it? A. Yes, sir.

Q. Before whom?

A. Before Frank Hall as a notary.

Q. Now during the time that he was making his statements and they were taken down in sections as you have stated— A. Yes, sir.

Q. —Did you at any time interrupt and make a remark or suggest to Mr. Rose?

A. I did. I interrupted him frequently.

Q. All right. Just state what interruptions you made.

A. Well, when he claimed he couldn't remember or claimed he didn't know just what they did say, and he was lying, or I knew from what I heard he was trying to lie out of it—

(Mr. MARQUAM.—I object to that kind of testimony that “he was trying to lie out of it.”)

Q. State what he said and what you said.

A. I called his attention the the conversation that he and Wooldridge had about Laura Herrington.

Q. Yes?

A. And I told him to tell the truth, just exactly. I told him to tell Mr. Miller exactly what he and Wooldridge were talking about.

Q. Did you call his attention to any particular subject? [266]

A. Yes. To that particular thing.

Q. What particular thing did you call his attention to?

A. To the conversation about Laura Herrington,

(Testimony of George Berg.)

and also to the conversation about the grand jury being in session; and then he claimed that he remembered, and went on and stated just what was said.

Q. Did you tell him at that time anything at all that you had heard? A. Tell Rose?

Q. Yes.

A. Yes. I told him that I heard him mention the grand jury.

Q. Did you tell him what it was that he had said about the grand jury?

A. No. I did not. I told him to tell the truth about what he had said about the grand jury being in session; that that was what I wanted him to say; and he did, he told Mr. Miller, and Mr. Miller took it down.

Q. Did he tell it right after he started to tell it?

A. Yes. He said that was the truth.

Q. How about the key?

Mr. MARQUAM.—“Did he tell it right.” What do you mean by “right”; by what this witness heard?

Mr. ROTH.—That is what I mean.

Q. From what you had heard in there did you know that the statement he made there at that time was a correct statement?

A. From what I heard of it, yes, sir.

Q. Did you make any suggestion to him about the key when he was making this statement? [267]

A. I did. I told him to tell what was said about the key, what conversation was had about the key. He said he knew there was a conversation about a

(Testimony of George Berg.)

key but he didn't know what it was that they talked about keys. I told him all we wanted was for him to tell the truth of the conversation that they had about the key.

Q. Now, the night before that, Mr. Berg, had you been down to Herrington's house? A. Yes, sir.

Q. What time did you go down there?

A. About seven o'clock or seven ten, somewheres right along in there, somewheres in the neighborhood of seven o'clock.

Q. What was your purpose of going down there?

A. I went down there to install a Haliday detector.

Q. What other purpose did you have? Did you go back again after that was installed?

A. Yes, sir.

Q. What was your purpose in going there at that time?

A. Well I went back there to hear what was said.

Q. Between whom?

A. Between Wooldridge and Laura Herrington.

Q. Where were you stationed?

A. I was in the room adjoining the front room, on the stairway where I could see the door, that is, the door between the two rooms.

Q. You were not upstairs?

A. No, sir. In fact I had everything ready and the machine installed.

Q. Did you see Mr. Wooldridge that night?
[268] A. I did.

Q. I mean at that time. A. No, sir.

Q. Did you hear anything while you were in

(Testimony of George Berg.)

there, from the outside? A. I did.

Q. What did you hear?

A. I heard two or three whistle signals.

(Defendant objects to the question and asks that the answer be stricken as incompetent, irrelevant, and immaterial, calling for a conclusion of the witness, and no foundation laid; whereupon the Court orders the word "signals" stricken and instructs the jury to disregard it.)

Q. Who went down with you at that particular time? Who was in the house at that particular time with you? A. The first time I went down?

Q. No. The last time.

A. Mr. Miller and myself.

Q. You were there three times?

A. Three different times.

Q. The time you were in there at the stairway.

A. Mr. Wolcott and Mr. Frank Clark.

Q. Where were they? A. They were upstairs.

Q. How long did you stay there that time?

A. We stayed there from sometime about seven or a little after seven—I don't remember, until twenty minutes after eight, about twenty minutes after eight.

Q. What time did you go back there again?

A. Well, somewhere before nine o'clock, somewhere before nine. [269]

Q. Who went with you at that time?

A. Mr. Miller.

Q. Who did you see there?

A. Wooldridge and Laura Herrington.

(Testimony of George Berg.)

Q. What was said there?

A. We asked for— We came in the door and we saw Wooldridge there and we asked for Mr. Herrington. She said her papa was up town. That is about all that was said. We just said—asked for her papa, and she said he was not there, was up town.

Q. And you left right away?

A. We left right away, we didn't stay.

Q. Which way did you go after you left there?

A. Came right up town to the office, up Second Street.

Q. Did you go back again there that night?

A. I don't remember whether we went back that night or not. I have been there so many times, that I don't remember whether we went back again that evening or not. I think we did, though, I think Mr. Miller and I went back later on.

Mr. ROTH.—You may cross-examine the witness.

Cross-examination.

(By Mr. MARQUAM.)

Q. Mr. Berg, how long have you been here in the capacity of a Deputy Marshal in Fairbanks?

A. Since the first of September.

Q. You were regularly located, or have been at Nulato, have you not as a deputy marshal down there?

A. Yes. Before I came here. Yes, sir. I have been in several different places. [270]

Q. Was that your regular station at Nulato?

A. That was my headquarters.

Q. And you were supposed to cover that territory

(Testimony of George Berg.)

down there? A. Yes.

Q. You have been stationed here since September about? A. Yes, sir.

Q. When did you first know or hear anything about this so called Wooldridge case wherein you were supposed to take part in the investigation of it?

A. Well about sometime the fore part of February. I don't remember exactly now.

Q. About the time when you went up to the Herrington house?

A. Oh, no. I heard of it before that time.

Q. Did you know at that time that you were going to undertake an investigation for the purpose of getting evidence? A. Yes, sir.

Q. How long a time before you actually went up there did you know about that?

A. Well, I can't state exactly, but several days.

Q. Who did you get that information from?

A. Mr. Miller.

Q. You were working under his directions?

A. Yes, sir.

Q. What do you know about the purpose, Mr. Berg of installing this—what did you call it, Hali-day Detector? A. Detector. Yes.

Q. It is sometimes known as a dictaphone?

A. No, sir. I never heard it called that.

Q. Explain that to the jury as you understand it.
[271]

A. It is a mechanical device consisting of dry batteries, induction coil, about a hundred and fifty feet of wire, and a little—well it is something made

(Testimony of George Berg.)

on the same principal as a telephone receiver, just a little instrument. That is all there is to it.

Q. It is supposed to be very powerful to detect—
(interrupted).

A. It is powerful and delicate and will detect anything.

Q. Detect slight sounds?

A. Yes, sir. It will detect a whisper.

Q. It will amplify them, will it not, to a greater extent than the human ear unaided will receive them?

A. It depends on the distance.

Q. But even at a short distance isn't that true?

A. You can hear them distinctly.

Q. It works upon the same principle, does it not, as a telephone receiver?

A. Yes.

Q. But many times more powerful?

A. Yes.

Q. And it will be conveyed over a wire by electric current?

A. Yes.

Q. You knew when you went up there to install that detector, as you call it, what it was being put in for?

A. Yes.

Q. Did you know the purpose, the object which was to be accomplished, or attempted to be accomplished?

A. Yes, sir.

Q. What was it?

A. It was to learn whether or not Laura Herrington was telling [272] the truth.

Q. Did you doubt the truth of her story up to that time?

A. I didn't.

Q. Did anybody that was working with you?

(Testimony of George Berg.)

A. I don't know whether they did or not. I don't think they did.

Q. And yet, not doubting it, you wanted to learn whether she was telling the truth? A. Yes, sir.

Q. There must be a reason for that, either a doubt in your mind or somebody's mind that was responsible for this effort. Isn't that true George?

A. There was no doubt in my mind but what she was telling the truth.

Q. I understand that. It is not necessary for you to volunteer statements of that kind.

A. You asked me the question.

Q. The question is whether or not the person that was responsible for this investigation, inasmuch as you say the object was to find out whether she was telling the truth— Don't you know as a matter of fact that there was a doubt in their minds whether she was telling the truth?

A. I don't know whether there was in their minds or not.

Q. You were not one that was responsible—(interrupted). A. No. I was working there.

Q. —for installing this instrument?

A. No, sir.

Q. You were simply obeying orders?

A. Yes. That is all.

Q. You had been up to the house prior to the time that you [[273] took this detective—or detector up there and installed it in the house— When I say "up" it may be "down." It is down on Second Street. I am referring to the Herrington house.

(Testimony of George Berg.)

A. Well, I don't know positively whether I was or not. I have been there so many times. I may have been there and I may have not.

Q. Prior to this time?

A. Yes. I think probably I was.

Q. Many times?

A. Not prior to that time, but since that time.

Q. You have been there many times since?

A. Yes. Since.

Q. Do you know, have you any idea how many times you have been there?

A. No. I have only been there three or four times subpoenaeing witnesses. Probably half a dozen times.

Q. You have been there many times when you were not subpoenaeing witnesses?

A. I was there three or four times when I was not subpoenaeing witnesses.

Q. Who was there when you went down to install this instrument?

A. Mr. Herrington and Laura and Mrs. Herrington, I think, was there.

Q. Did you tell them that they would have to get away from there or go out somewhere? A. No, sir.

Q. Do you know whether anybody in the marshal's office did give Mr. and Mrs. Herrington those instructions? [274] A. I don't know.

Q. Who went with you when you installed this?

A. Mr. Miller.

Q. That was along in the evening about seven o'clock? A. Somewhere along in there.

(Testimony of George Berg.)

Q. Then after this was installed did you stay there?

A. No, sir. I came uptown, up to the office, and went back later.

Q. What time did you go back?

A. Oh, within—I don't know—within a short time.

Q. About how long. In other words, what was it when you got down there when you stayed?

A. It was some time before half-past seven.

Q. Who went down with you?

A. Mr. Wolcott and Mr. Clark.

Q. And they stayed there? A. Yes, sir.

Q. Wolcott? A. Yes, sir.

Q. You mean Ed Wolcott, the official reporter?

A. Yes, Ed Wolcott.

Q. He went upstairs? A. He did.

Q. And stayed there? A. Yes.

Q. What was he doing there?

A. He was on the end of the string to take notes.

Q. He had this receiver to his ear and his pencil out there to write down what was said? A. Yes.

[275]

Q. Did he write down anything? A. No.

Q. Did he have a light there upstairs, so he could see to write? A. No, sir.

Q. He was going to write in the dark?

A. Yes. That is it.

Q. He had this cap over his ears? A. Yes.

Q. Sitting there at a table? A. Yes, sir.

Q. And you were expecting to hear something. How were you going to hear?

(Testimony of George Berg.)

A. I was down on the stairway.

Q. So you were in sight? A. How?

Q. Were you behind something?

A. Yes. I was behind. I could see the door leading into the front room.

Q. What was to prevent those people in the front room from seeing you?

A. They couldn't see me unless they came up the stairway. There was a partition.

Q. You were around— A. Yes.

Q. —so you could peek around the corner of the stairs and see what was in the room?

A. No. I couldn't say I was in the room, but I could see part of the room.

Q. Who was this other man, Frank Clark?

A. Yes, sir. [276]

Q. Where was he perched?

A. He was upstairs in the front room.

Q. Did he have one of these detectors with him, too? A. No.

Q. He had to depend on his own hearing?

A. That is it exactly.

Q. Three of you up there? A. Yes, sir.

Q. Where was Laura? A. She was downstairs.

Q. Was she alone in the house with you three men?

A. She was in the front room downstairs.

Q. Was she with you three men alone in the house?

A. Yes. She was there all right.

Q. What did you hear when you were there? Tell us all— Tell this jury all you heard while you were there. A. Well, I heard some whistling.

(Testimony of George Berg.)

Q. Just tell us what you heard downstairs, not about any whistling, what you heard downstairs there in the house, if you know who was talking.

A. There was no one there except Laura.

Q. Nobody came?

A. Nobody came in while we were there; no.

Q. You finally got discouraged and quit your job there, did you? A. Yes, we pulled up a little too soon.

Q. And you went back again?

A. Yes. I could tell you the reason for pulling up, if you want to know. [277]

Q. You were in that attitude of mind that you was expecting to hear something and expected that you were going to hear something and wanted to hear something?

A. Yes; and there was a date made there.

Q. It was a disappointment to you that you didn't hear it. Isn't that true? A. Yes, it was.

Q. After all those elaborate preparations?

A. Yes.

Q. When you went back up there with Miller what did you go up there for, then? Were you going upstairs on that occasion to get up to this whispering machine?

A. No; I had taken it down and taken it with me.

Q. What did you go up there again for?

A. Mr. Miller wanted to talk to Laura Herrington, I suppose.

Q. What about?

A. I don't know.

(Testimony of George Berg.)

Q. Don't you know what he went up there for?

A. No. He can probably tell you.

Q. I ask you if you didn't hear Mr. Miller say, "I wonder if that girl is lying to us. We will go up there and see about it." Did you hear him make that remark?

A. No, I can't say that I did.

Q. You wouldn't say positively that you didn't hear it, would you?

A. I think I would. If I had heard it, I think probably I would remember it.

Q. You never heard that? A. No.

Q. You and he went up there, and you came to the door, and [278] your coat collars were turned up?

A. Yes. He said to me, "We will take a walk up there. I want to see Laura."

Q. What I wanted to know was: When you got up there you had your coat collars turned up?

A. We had on our overcoats, yes, sir.

Q. And your collars were turned up so it would be difficult for a person to recognize you unless they got a good look at you?

A. Yes, possibly. It was a cold night and naturally we would have our coat collars turned up. We were both wearing hats.

Q. What was that?

A. It was a cold night and naturally we would have our coat collars turned up. We were both wearing hats.

Q. When you knocked at the door, you didn't expect to see Wooldridge there? A. No.

Q. You were surprised and you backed away as

(Testimony of George Berg.)

quick as you could?

A. I think Miller asked the question, was her papa home, and she said no, he was uptown, and we went right out.

Q. You went right out? A. Yes, sir.

Q. Couldn't you climb up and get around upstairs someway, anyway, get up there while he was there?

A. We didn't want to. We had no business up there at that time.

Q. Didn't you have just as much business to listen then when Wooldridge was there then as you did before, or wasn't that part of the program you were to carry out? A. Apparently not. [279]

Q. You are not sure whether you were back there again that night or not?

A. No. Probably we did, but I am not sure about that.

Q. If you did go back, what would be your purpose, what would you have gone back for?

A. If I did go back I would have gone back just to accompany Mr. Miller. He asked me to.

Q. I wish you would fix, if you can, more definitely, with reference to the day that you put this machine there, installed the machine, when it was that you first heard about this plan to set this seine, or whatever you call it, up there at the Herrington house?

A. I can't state definitely when it was that I first heard of it, but I can give you the date exactly when I installed the machine..

Q. On what day was that?

(Testimony of George Berg.)

A. On the fourteenth day of February, St. Valentine's day.

Q. While it may be impossible for you to give the exact date when you first heard about this scheme, give the jury an idea, as near as you can, when you first heard about it.

A. Well, it was some time before I went up there, before the fourteenth. I don't know how long. It may have been a week, or it may have been four or five days and it may have been ten days. I can't tell exactly.

Q. Would your best judgment be somewhere between four or five days and ten days?

A. Somewhere along in there, three or four days.

Q. Did you have any talk with George Herrington about this plan that you or Miller had in mind? [280]

A. No, sir.

Q. You never talked with him about it?

A. No, sir.

Q. Did you ever hear Mr. Miller or Mr. Herrington or anybody else say that Wooldridge was liable to be at that house with reference to delivering some potatoes there? Did you ever hear of that before?

A. I heard that Wooldridge had a date there at seven-thirty, but I never heard nothing about no delivering potatoes.

Q. When did you hear that?

A. I heard it either the day I went up there or the day before. I don't remember, but it had been—(interrupted).

Q. Had you heard any statements, whether you

(Testimony of George Berg.)

heard them direct from George Herrington or not, purporting to come from him, to the effect that Wooldridge would probably be up to the house there to see him about some potato matter?

A. No. I never talked to George Herrington.

Q. Did you hear any statement upon the part of anybody connected with this enterprise, Miller or anybody else, that Herrington had made such a statement? A. Not that I remember.

Q. And you, yourself, never talked to Herrington about it, you say?

A. No. I never talked to him about it.

Q. Now, after a miscarriage up at the other house, you undertook to lay—we will call it a trap for Wooldridge up here at Rose's, did you?

A. No, sir, I did not. The next day I left town and was out on the creek and didn't return until six o'clock the evening [281] of the fifteenth.

Q. Then it was laid in your absence, all the plans were made in your absence, and you were informed what they were?

A. I was informed about seven o'clock that I was to go into that hallway and see what I could get.

Q. You went through McDermott's place?

A. Yes, sir.

Q. And Woods went with you?

A. Wood was there before I arrived—John Wood.

Q. Where is Wood now.

A. He is on his way to Ruby.

Q. Left recently?

A. Yes. He left two or three days ago.

(Testimony of George Berg.)

Q. When you went up there and went into this hall you knew, George, what you were there for?

A. Yes, sir.

Q. You knew, you had an idea in your mind, what you were going to hear, didn't you?

A. I was told.

Q. Never mind what you were told. You had in mind what you were going to hear?

A. No, I didn't know what I was going to hear.

Q. You knew what you were likely to hear according to your views of it?

A. I didn't know anything about it.

Q. You knew what you wanted to hear?

A. No, I didn't know.

Q. Didn't you? A. No. [282]

Q. You didn't have any idea?

A. No, sir; I went there to listen to see what I could hear. I didn't know what I was going to hear.

Q. You cut a hole in the cloth and paper and between the boards? A. Yes, sir.

Q. How high up or low down was that?

A. Oh, it was only about that high from the floor (indicating). Probably three feet, I should judge.

Q. You had to sit down? A. I stooped down.

Q. Why didn't you cut one higher up, so that you could stand up and listen?

A. Because the cracks in the boards were not high enough. It happened to be a good high place.

Q. You wanted a good wide place to peek through?

A. Yes; so I could see what was in the room.

Q. What part of Rose's bicycle shop was this hole

(Testimony of George Berg.)

that you cut opposite? A. It was opposite the bed.

Q. Now, you stated in your direct examination that you were about six or eight feet from the bed.

A. I should judge about that.

Q. How wide is that room?

A. I couldn't tell you. I judge from where I was, it was about that. It may have been eight feet or it may have been a little further or a little less. I couldn't tell exactly.

Q. The bed, as I understand it, was against the opposite wall [283] from where you were.

A. Yes, sir.

Q. It is a narrow bunk, a narrow couch, single.

A. I don't know whether it is single or double.

Q. You could see over there and see it?

A. Yes, I could.

Q. Couldn't you tell from looking through that hole— A. No.

Q. —whether it was a single bunk or a double bunk? A. I didn't pay that much attention to it.

Q. Was it a couch or a bed or what?

A. Just a couch, I think, a homemade affair, I think. I couldn't tell exactly; it may have been a bed.

Q. If you don't know, you don't know.

A. But I could see Mr. Rose lying on it.

Q. You could see a bed and did see a bed?

A. Yes, certainly, but I don't remember now whether it was—

Q. You were standing up and leaning way over this way (indicating) and peeking through? A. Yes.

(Testimony of George Berg.)

Q. Couldn't you sit down on the floor there and be comfortable?

A. Not very well. It was cold in there.

Q. And you went there about half-past seven?

A. No. I went there about a quarter after seven.

Q. And stuck there until eight o'clock?

A. A little after eight.

Q. Did you have a pencil and paper and make notes of what you heard? A. I did not. [284]

Q. You couldn't write in the dark? A. No.

Q. Just tell the jury what the first thing that you heard or saw at the time that Wooldridge came in there.

A. The first thing I heard was that he said to Rose, "You have got too much light here," and he turned around and went out in the front part and turned the light out.

Q. You had been watching Rose there for three-quarters of an hour up to that time, or about that?

A. I had been there for some time.

Q. What had he been doing all that time?

A. He was just lying on the bed. I think he was reading. I am not positive about that.

Q. Now are you stating the exact words that Mr. Wooldridge used, or what you understand by them?

A. Yes, sir, as near as I can remember the exact words.

Q. The exact words?

A. As near as I can remember.

Q. That is what I want to get at; whether you are purporting to repeat the exact words, or stating your

(Testimony of George Berg.)

remembrance of the substance. There is a vital difference sometimes.

A. I will say that they are the exact words.

Q. Just give us again the exact words.

A. He said, "You have got too much light here."

Q. What did Mr. Rose say?

A. He said something, I don't know what it was. I suppose he told him to turn it out, or something, and he went out and turned it out. [285]

Q. Why don't you know?

A. Because he didn't talk as loud as Wooldridge did.

Q. Rose didn't talk as loud as Wooldridge?

A. Not at that time.

Q. Well, if you didn't hear what Mr. Rose said, why do you suppose he said something?

A. Well, I know he said something.

Q. But if you didn't hear what it was, why are you trying to tell this jury that you suppose he said something when you don't know anything about it?

A. I do know that he said something.

Q. No, you are supposing, and this jury should try to tell this jury what he said.

The COURT.—You are getting it pretty badly tangled up, Mr. Marquam.

Mr. MARQUAM.—I don't think I am tangled, your Honor.

The COURT.—The greater part of your question is purely argumentative, and the question has been answered.

Mr. MARQUAM.—Q. Will you explain to this

(Testimony of George Berg.)

jury why, when you did not hear what was said, that you tell them that you suppose that he said something about turning the light out.

Mr. ROTH.—We object to that as irrelevant, incompetent and immaterial, and has been already asked and answered.

The COURT.—You may answer the question if you can.

A. I don't know just what was said; I don't remember.

Mr. MARQUAM.—Q. That is not the answer to the question. You told us that, and it is perfectly plain that you don't know what was said.

A. I do—(interrupted). [286]

Q. But in answer to my former question, you answered to this jury, "I suppose he told Wooldridge to turn the light out."

A. I don't know whether he did or not.

Q. Why are you telling this jury that you suppose so; that that was what he said?

Mr. ROTH.—We object to that as—(interrupted).

Mr. MARQUAM.—All right.

Q. What is the next thing that was done or said, George?

A. The next thing after the light was turned out, he came in, and they talked about the picture show.

Q. Was that the first subject that they conversed upon?

A. After the light was turned out. Yes, sir.

Q. You mean by that the light in the front room?

A. Yes.

(Testimony of George Berg.)

Q. The light in the front room was still burning.

A. Was still burning. Yes, sir.

Q. Rose was still lying upon the bed?

A. Yes, sir.

Q. Where was Wooldridge?

A. He was right close to him.

Q. How was he facing; facing towards you?

A. No, sir.

Q. Facing from you?

A. Standing kind of sideways from me, facing Rose.

Q. Was he standing up or sitting down?

A. Part of the time, when he first came in, he was standing, and then I think he took a chair and sat down.

Q. When he first went in there and when he was standing, was his back to you?

A. Partly so. Yes. [287]

Q. It would naturally be so unless he turned around after he walked in there, would it not?

A. Yes. He moved around when he was in the room there considerably, moved back and forth.

Q. Then he sat down, and after he sat down how was he facing in regard to you?

A. He was sitting kind of side view, close to the bed.

Q. He was between the bed and you?

A. Yes. Off to one side a little.

Q. Well, now, just what did he say and what did Rose say about the picture show? I don't want the substance of what they said, but what you heard

(Testimony of George Berg.)

there, neither do I want your conclusion.

A. I heard him ask him whether he had went to the picture show lately, and Rose said he was there Friday night. I heard him say that, then they went on with a general conversation for awhile in regard to picture shows.

Q. What was the general conversation?

A. They spoke of the picture shows, what plays were on, and so on.

Q. What plays did he say were on?

A. I don't remember.

Q. That was what you were there for, to hear what was said. You don't remember. Can't you tell this jury anything about what was said in regard to the picture show? A. I have just told them.

Q. You said—we understand that. Did he say anything more about picture shows?

A. He may have done so. Yes. [288]

Q. That is not the question whether he may have done so. I have asked you what he done, not what he may have done.

A. He talked about going to the picture show.

Q. You are now stating the result and your estimate of what he said. I want you to repeat the conversation, what Wooldridge said and what Rose said. Use their own language.

A. I can't repeat their exact conversation.

Q. You can't do it? A. No.

Q. And you can't do any better than what you have already done in indicating to the jury what you have heard there in regard to the picture shows.

(Testimony of George Berg.)

A. Just what I have told them about the picture shows and about him—(interrupted).

Q. What was the next subject after the picture show was discussed?

A. After they were through talking about the picture show, they started in—I could just hear a little. They started in talking about a key or keys.

Q. What was said about the keys?

A. I couldn't tell you, because some of that I didn't hear. They spoke of keys and I heard Rose say that that was a key—with reference to some key. I didn't see the key, or anything about it—that that was a key to the front door.

Q. Did you hear that? A. Yes, sir.

Q. Didn't you tell Marshal Miller, when you first reported to him as to what you had heard there, that you didn't hear—that you heard the word "key," and that was all you did [289] hear. Didn't you tell Miller that? A. No.

Q. Are you willing to say now to this jury that you didn't tell Mr. Miller that?

A. I told him about the key. Yes.

Q. Answer the question. Read the question. Answer it the way I have asked it. Answer the question I have asked.

(Question read as follows: "Didn't you tell Marshal Miller, when you first reported to him as to what you had heard there, that you didn't hear—that you heard the word 'key,' and that was all you did hear. Didn't you tell Miller that?")

(Testimony of George Berg.)

Defendant objects as already answered. Overruled.)

A. I told him about the key. Yes. About hearing a conversation about the key. I heard the keys mentioned

Q. Isn't that the substance of what you told Miller; that you just heard "keys" mentioned, and that was all you did hear. Didn't you tell him that?

A. I don't remember. I know that I spoke to him about the key and told him that I heard a conversation something with reference to a key.

Q. Isn't that the substance of what you told Miller; that you just heard the word "key" mentioned, and you didn't hear what they said or know what they were talking about. Isn't that true?

A. I knew they were talking about the key. I didn't know what key it was, except—(interrupted).

Q. What are the facts you started to say awhile ago, repeat a sentence you were supposed to have heard there.

A. I simply said that I heard them talking about a key, mention something about a key. [290]

Q. Didn't you say a moment ago that you heard him say—after you said that you couldn't see the key—that you heard him say that was the key to the front door?

A. I heard Rose say "That is the key to the front door."

Q. Did you tell Miller, when you reported the result of your hearing, that you heard that?

(Testimony of George Berg.)

A. I don't know whether I did or not. I suppose I did.

Q. Don't you know as a matter of fact, that when you reported to Mr. Miller you told him you had heard something about a key, something about a key mentioned, but you didn't hear what the conversation was, or any of it? Answer that yes or no; what you told Miller when you first reported to him?

A. Repeat the question.

Q. (Last question read to witness.)

A. Yes. I told him about the key.

Q. That is not an answer to my question, Mr. Miller (evidently means "Berg"). I want you to answer this question directly: Whether you said anything more to Miller, as having heard it up in Rose's repair shop, when you were listening, than that you heard "keys" mentioned, and that was all that you did hear. Didn't you tell Miller that?

A. I may have done so.

Q. And if you told him so at that time that was the truth of the matter, wasn't it?

A. It probably was.

Q. And when you got Mr. Rose down there you told him he was lying and insisted that he had been talking about some key there, and he told you that he didn't remember a thing about [291] it, but you insisted upon it, and he said that if he had said anything it must have been about some key hanging up there?

A. No. It is not. I never told Rose he was lying.

(Testimony of George Berg.)

All I told Rose was to tell the truth in reference to the key.

Q. Not once?

A. No. Not once. I told him to tell the truth in reference to the key. That is what I told him.

Q. That is all your answer to that. What did you hear next?

A. I heard them talking about Laura Herrington.

Q. What was the first thing that they said about Laura Herrington?

A. I don't remember the exact conversation.

Q. Why, you were there listening. A. I know.

Q. You are supposed to remember.

A. I just told you why awhile ago, that it was in a low tone and I couldn't hear all that was said.

Q. You couldn't hear all that was said? A. No.

Q. Well, just repeat the words that you did hear. Don't give your estimate of it. What I mean is just tell this jury the words that you heard spoken there.

A. I can't repeat the exact words, but I can give you the substance of it.

Q. Can you repeat any of the exact words they used? A. I can give you the substance of it.

Q. I don't want the substance of it. I want you to tell this jury exactly what you heard. [292]

A. I can't do that.

Q. You can't do it?

A. No. I don't remember the exact words.

Q. How long were they there talking?

A. Probably fifteen or twenty minutes.

Q. And you can't tell this jury one word that you

(Testimony of George Berg.)

heard them speak? All you pretended to do is to give your idea of what the result of their conversation was. Is that it?

A. No. I have told them a good deal of what I have heard.

Q. I am talking about—just tell one thing. Just tell this jury one thing that you heard with reference to this Herrington girl, and who said it, and when it was said; and in asking that question I want to say again that I want the language that was used.

A. I told you that I couldn't repeat the exact language.

Q. Did you hear Mr. Wooldridge tell Rose anything about what had happened down in Mr. Herrington's house? A. No, sir.

Q. You didn't hear anything about that?

A. No, sir.

Q. Are you willing to tell this jury that that subject was not talked about? A. I didn't hear it.

Q. I understand, Mr. Berg, you say that you didn't hear it, but of course the situation in which you were in can only be conveyed to the jury by your statements. What I want to know; are you willing to say that that subject was not discussed or was not talked about, or are you simply pretending to say that you didn't hear it. [293]

A. No. I am not going to say that it was not discussed.

Q. It might have been and you couldn't tell?

A. I am not going to say that it was not discussed. I told you there was a good deal of that conversa-

(Testimony of George Berg.)

tion that I didn't hear because it was in a low tone.

Q. Was there anything said by Mr. Rose or by Wooldridge about the Herrington girl or these other girls chasing from cabin to cabin around town here soliciting money? Did you hear anything about that? A. No.

Q. Are you prepared to say that no conversation of that kind took place there?

A. I think so. I didn't hear it.

Q. You didn't hear it? A. No, sir.

Q. It might have been that part of this conversation that you didn't hear might have been about that?

A. I don't hardly think so.

Q. I don't want any think. Just state positively. If you can't tell say you don't know.

A. No, I don't know.

Q. You didn't hear anything about that?

A. No. I can state that they went out into the other room, in the front part, away from where I could see them and had a conversation that I didn't hear. I could hear them talking, but I couldn't tell what they said.

Q. What was the thing that was last said between Mr. Rose and Mr. Wooldridge before they left the back room and went out into the front part of the room? [294]

A. You mean before they left the back room?

Q. Yes. What was the last thing that was said?

A. I don't remember the last thing.

Q. Is that what you want to be understood, that you don't remember, or you didn't hear?

(Testimony of George Berg.)

A. I don't remember the last thing that was said, or I might not have heard it—the last thing.

Q. How far into the front part of the room did they proceed when they went out there?

A. I couldn't say. I couldn't see the front part of the shop.

Q. Could you tell by the sounds that you did hear?

Q. Yes. I did have an idea, you know.

Q. As I understand you, you didn't hear any of the conversation that occurred between them after they went out into the front room?

A. No. I did not.

Q. How far could they have been away from you at that time?

A. They could have been twenty or thirty feet probably away from me.

Q. Twenty or thirty feet?

A. Yes, sir. It is quite a long room.

Q. How long did they remain out there?

A. They didn't stay there very long, five or ten minutes.

Q. Then did they come back again? A. Yes, sir.

Q. Was that all before Laura Herrington came in?

A. No. I think that was after she came in. I am not sure.

Q. When Laura came in where was Rose and where was Wooldridge?

A. Rose was still laying on the bed. [295]

Q. And Wooldridge was where?

He was right there in front of the bed, close to it somewhere.

(Testimony of George Berg.)

Q. Sitting down or standing up?

A. He may have been sitting down or he may have been standing up. I don't remember exactly.

(The Court takes a recess until 4:05 P. M. and the jury withdraw in charge of the bailiffs after being admonished as usual, and subsequently come into court, and the defendant and the attorneys being present, the trial is resumed.)

Q. Could you then see her as she came through the store, that is, the front part?

A. I didn't see her in the front part. I saw her when she passed in front of me and went to the back end of that room.

Q. Do I understand you that at that time the light in the front part of the building was out?

A. Yes, sir.

Q. Did you see, at the time that the door opened and somebody, you not knowing who it was I presume but finding out afterwards that it was Laura Herrington, when the door opened, did you see Mr. Wooldrige get up and look out around the partition to see who it was?

A. I don't remember whether I did or not.

Q. He might have done that; looked out to see who was coming through the outer part of the store?

A. He may have done so.

Q. Did you hear Rose say anything at that time?

A. Yes, I did.

Q. What did you hear Rose say?

A. I heard him speak to the girl. [296]

Q. What did he say to the girl?

(Testimony of George Berg.)

A. He said, "Hello, Laura," or something like that, when she came in.

Q. Did he say, "Why, it is Laura," when she came around this partition so he could see her?

A. He called her by name. He said, "Hello, Laura," or something like that.

Q. Might it have been the expression, "Why, it is Laura"? A. It might have been so.

Q. He might have said that? A. Yes, sir.

Q. After she got within sight of you, Mr. Berg, so you could see her, what was the first thing that she did?

A. She passed right in front of me, between me and Rose, and went to the back end of this room, and I couldn't see her. She stood there or sat down. I couldn't see when she went clean to the back end of the room.

Q. What did Rose do then and there?

A. Why, I think he sat up on the bed and he said something in regard to Laura.

Q. What did he say?

A. He said that, "Laura can come and see me any time she wants to."

Q. Who was he talking to?

A. Talking to Wooldridge at the time.

Q. What had Wooldridge just said that brought up that statement?

A. I can't recall just what he did say.

Q. Did you hear what he said. [297]

A. I heard him say something.

Q. Were you able to hear what was said and have

(Testimony of George Berg.)

since forgotten what it was?

A. I know I was able to hear, but I don't remember now, because they were talking in loud tones at that time, talking as we are talking now when she came in.

Q. But you don't remember a thing about the statement that Wooldridge had just made to him before that, before that remark that Mr. Rose made "Laura can come to see me whenever she wants to." Is that it? A. Something like that.

Q. What was the next thing that was said or done?

A. I don't just remember what the next thing was, but they talked on there for a while.

Q. Who did?

A. The three of them. They were talking back and forth.

Q. What did Laura say?

A. I don't remember what she said now.

Q. Do you mean that you didn't hear what she said, or don't remember what she said?

A. Oh yes, I heard at that time because they were talking as we are talking now, but I don't remember the exact conversation.

Q. If you don't remember the exact language, can you tell what the subject was that she was talking about? A. I can't recall now.

Q. You can recall nothing that either Laura or Wooldridge or Rose said after Rose made the remark, "Laura can come to see me whenever she wants to." [298]

(Testimony of George Berg.)

A. Not at that time I don't remember just what was said.

Q. How long did they stay there and talk? The conversation, or the substance of which, or the language of which you are not able to remember, how long did that continue?

A. It was only a very short time.

Q. About how long?

A. A few minutes, probably five minutes.

Q. And you can't tell this jury during that period of five minutes anything that was said?

A. In reference to this remark that she could come and see him any time she wanted to, and they were joshing back and forth, and then Rose and Wooldridge went into the front part and I couldn't hear what they were saying.

Q. I want to make it clear. Before they went out, during that period of five minutes, I want to know if there is anything that you can tell that you heard during that five minutes?

A. It may not have been five minutes, a few minutes.

Q. It don't matter how long it was. The question is what you heard.

A. I don't remember just the conversation.

Q. You say they were talking loud.

A. Yes, they were. I don't remember the exact words.

Q. What?

A. I don't remember just what was said.

Q. You were there for that purpose.

(Testimony of George Berg.)

A. How?

Q. Wasn't your instructions—(interrupted).

A. Yes. [299]

Q. —from Mr. Miller to hear and remember so you could repeat everything that was said.

A. That would almost be impossible to repeat everything that was said, because I couldn't hear it all.

Q. Wasn't that your instructions?

A. My instructions were to get what I could.

Q. On any particular subject?

A. Whatever they talked about.

Q. They were talking in a louder tone of voice then after Laura came in than they had been previously, were they, George? A. Yes, sir.

Q. I understood you to say that previous to that time they were talking low, in a low voice.

A. Yes.

Q. Now will you give this jury the language which was employed by Mr. Rose or Mr. Wooldridge with regard to this conclusion that you came to with regard to Wooldridge wanting to have connection or sexual intercourse with this girl. Just tell this jury exactly what was said.

A. I can't tell you just the exact language. I don't remember because I didn't hear it all.

Q. You didn't hear it all? A. Not all. No.

Q. That was just a conclusion that you reached?

A. It was not a conclusion. I heard some of it.

Q. Just tell this jury just what you heard, in the language that you heard it.

(Testimony of George Berg.)

Mr. ROTH.—He has already said he couldn't give it in the language [300] in which he heard it, and we object to the question.

The COURT.—Q. Is there any part of it you can give to the jury in the exact language that you heard?

A. Not, only in substance. I know that her name was mentioned.

Mr. MARQUAM.—Q. That is as far as you can go?

A. And the substance of it was—(interrupted).

Q. I don't care what the substance of it was, or what conclusion you came to; I want you to answer what my questions are directed to in regard to that; the language you heard, and if you can't repeat any of it, then you can't.

Mr. ROTH.—He has already said that he couldn't state it in the exact language.

Mr. MARQUAM.—I just want to be sure about that.

Q. Well, after they had been out in the front room—as I understand you, they went out into the front room while Laura was in the back room.

A. Yes, sir.

Q. The light was still burning?

A. In the back room. Yes.

Q. In the back room?

A. But not in the front room.

Q. Do I understand you that while they were out in the front room they were whispering or talking?

A. They were talking and whispering so I couldn't

(Testimony of George Berg.)

hear what was said.

Q. Do you know whether they were talking or whispering, or do you mean to say to this jury that you didn't hear what was said? [301]

A. No, I didn't hear what was said.

Q. By reason of the distance?

A. I don't know whether they were whispering or talking. If they had been talking real loud I would have heard it, probably.

Q. If they were talking extra loud?

A. I think if they were talking as we are talking now, I would have heard it because the distance wasn't great and the partition was just an ordinary thin board partition with cracks in it.

Q. Well, I understood you to say that they might have been thirty or forty feet, or twenty or thirty feet away—

A. Twenty or thirty feet, something like that.

Q. —up towards the front of the store.

A. Up towards the front of the store.

Q. I want you to give this jury the substance of your testimony as to whether or not you can state whether they were whispering or talking when that happened. A. No, I can't tell that.

Q. They might have been talking in an ordinary tone?

A. They might have been talking in an ordinary tone, but I didn't get what was said when they were up there.

Q. About how long in minutes was that?

A. It was very short, probably a couple of min-

(Testimony of George Berg.)

utes, two or three minutes. I couldn't tell how many.

Q. Did you hear Laura at any time she was in there, or when she came in, or after she came in, say anything to Wooldridge to the effect that somebody was following her? A. No, sir. I did not.

Q. Might that statement have been made by her in that room [302] without your being able to hear it?

A. I don't think so, because she was right close to me all the time.

Q. Right close to you?

A. And if she had made that statement, she would have made it loud and I would have heard it.

Q. How do you know she would have made it loud?

A. The way she talked when she came in.

Q. What was the first thing that she said when she came in? I asked you a while ago and you were not able to say.

A. They greeted her with "Hello" and she said "Hello."

Q. You didn't tell that before.

A. They said "Hello, Laura," or something like that, and she said "Hello."

Q. What else? Was there anything else that she said? A. How?

Q. What else did she say that you heard?

A. I don't remember now.

Q. When she first came in and came alongside of Rose past this partition, were not she and Wooldridge pretty close together there when he got up to

(Testimony of George Berg.)

look around that partition?

A. I don't remember whether they were or not. She passed him, evidently passed him to get by.

Q. Now might she have said at that time as she passed him and was close to him that she was being followed, or words to that effect, and you might not be able to have heard it?

A. I think I would have heard it if it was the first thing she said.

Q. I don't mean exactly the very first thing, but along about [303] that time.

A. I don't think she said it, because if she did I would have heard it.

Q. You don't know whether she said it or not.

A. No. I couldn't say positively.

Q. After they got through talking out in the front room, just tell us the next thing that was done.

A. Well, I think they came back, or one of them came back, and then they went out, went out of the building and left her there.

Q. Well now, you say you think either one or both of them came into the back room. A. Yes.

Q. Did you hear them say anything then?

A. I couldn't hear what was said. There was something said but I couldn't tell what it was.

Q. Did they do anything while they were in there?

A. Just talked and—(interrupted).

Q. What did they say?

A. I couldn't make out what they said.

Q. You couldn't hear it?

A. No. I couldn't hear it to tell just what they

(Testimony of George Berg.)

were talking about. There was something said, I know that, but I don't know what it was.

Q. Did they say anything to Laura? A. Yes.

Q. What did they say to Laura?

A. I just told you I don't know what they said. I couldn't hear.

Q. You couldn't tell what was said by them, either to Laura, [304] or what Laura said to them, or what they said to each other?

A. After they came back, no.

Q. The light was still burning then. You could still see them? A. I could see Laura.

Q. Had she moved from the back part of this room forward so you could see her?

A. Yes. She stepped around.

Q. Was anything done, besides what might have been said, that was out of the ordinary? A. Yes.

Q. What did they do?

A. They turned around and went out, and she turned out the light.

Q. Did you hear them tell her to turn out the light? A. No.

Q. Did you hear either one of them, Rose or Wooldridge, tell Laura to turn out the light?

A. I don't remember of hearing it.

Q. Did she turn out the light after they had gone out of the back room, just after they went out of the back room?

A. No. I think she turned it out just as they were leaving.

(Testimony of George Berg.)

Q. Then the whole building was in darkness, was it?

A. The whole building was in darkness. Yes, sir.

Q. You don't know, as far as your sense of sight was concerned, what did happen, whether they went out or what happened?

A. I could hear them walking out, and I could hear them in there after the light went out, and I could hear them close the door.

Q. I asked you before where this light in the back room was [305] situated. A. Yes.

Q. Where was it?

A. I can't tell you the exact location in the room. It was in the room there.

Q. Were you able to see her actually turn it out, or did you just see the light go out?

A. I just saw the light go out. I know she was the only one there, because they had already gone.

Q. Wasn't that light right over the bed in full view of you?

A. I think it was off a little to one side.

Q. When Mr. Rose was lying down on his bunk or bed, or whatever it was there, wasn't the light right up over his bed so he could see to read by it?

A. I am not positive whether it was or not. It may have been off to one side.

Q. You didn't actually see her walk up and turn it out, but you just saw it go out.

A. I saw it go out.

Q. And you assumed she turned it out?

A. She was the only one there at the time.

(Testimony of George Berg.)

Q. So far as your knowledge was concerned, there might have been a switch for that light somewhere else?

A. There might have been a switch, but I know the light was turned out.

Q. They went outside of the door, did they?

A. Yes, sir.

Q. How long were they gone?

A. I couldn't tell exactly. Not very long, a few minutes. [306]

Q. Did they both go out of the door?

A. I couldn't say whether they did or not. I heard them walking; I heard the door open and close, and I naturally supposed they did.

Q. That is just a conclusion that you came to, from that circumstance, that they both went outside?

A. Yes.

Q. Is this hall there that you were in, connected with Lacey Street? A. Yes, sir.

Q. You could walk, could you, from where you were in this hall right out to Lacey Street?

A. No, no.

Q. What was to prevent you?

A. There was some boxes and rubbish and stuff in that hallway.

Q. You couldn't get through?

A. I didn't try to get through.

Q. When you went out you went the way you came, through McDermott's store? A. Yes.

Q. Now at what point in this proceeding did you quit this post that you had, where you had this hole

(Testimony of George Berg.)

in the wall, and go out?

A. When Mr. Miller came in and called me.

Q. How long was it after you heard this front door close?

A. Oh, probably ten or fifteen minutes, I don't remember.

Q. Was it that long?

A. I think so. About ten minutes.

Q. When you came out and around, where was Rose and Wooldridge? [307]

A. I didn't go out around.

Q. Where did you go?

A. I came out and came down to the office.

Q. When you got down to the office then they were there? A. Yes, sir.

Q. Now have you told, either in your direct examination or in your cross-examination, Mr. Berg, everything in the way of conversation, and repeated everything in the way of conversation that you heard there that you can remember?

A. Practically so. Yes.

Q. Is there any special thing or any particular thing that you haven't testified about that you did actually hear and can tell and give the language that was used? A. I don't remember at this time.

Q. When you got down to the office you found there—

A. I found Mr. Rose and Wooldridge and Laura Herrington there.

Q. At the marshal's office? A. Yes, sir.

Q. In what room of the marshal's office?

(Testimony of George Berg.)

A. In the private room.

Q. In the private room, and who was there?

A. Miller and McMullen and Hall, myself and John Wood.

Q. Besides these three persons? A. Yes, sir.

Q. That was five deputies, was it? A. Yes, sir.

Q. Who did you or any of the deputies talk with first?

The COURT.—When and where?

Mr. MARQUAM.—In this private office.

A. Why, I talked with Mr. Miller first, or he rather talked to [308] me. He told me to stay at the door.

Q. Of course, I don't care anything about that particularly. What I want to know, who, of the three persons that were there besides the deputies, Wooldridge, Laura Herrington or Rose, did you or any of the persons that were with you talk with first?

A. Why, I couldn't say exactly, but I think that Mr. Miller talked to Laura Herrington first.

Q. In your presence?

A. I think so. I wouldn't be positive about that.

Q. What was said?

A. I can't tell exactly now just what was said.

Q. Do you know what subject then, without giving your conclusions, what subject they were talking about?

A. Yes. They talked in reference to what took place.

Q. Where?

The COURT.—Do I understand you that you

(Testimony of George Berg.)

make Mr. Berg your own witness now? I do not remember any direct examination on the question of his talking with Laura Herrington or with Mr. Wooldridge in the marshal's office. There was some direct examination about talk with Mr. Rose.

Mr. MARQUAM.—That was all at the same time, as I understand it.

Mr. ROTH.—No. That was at a subsequent conversation when Mr. Rose went down there alone.

Mr. MARQUAM.—Q. These questions that Mr. Roth asked you upon direct examination a while ago with regard to what Mr. Rose had said and done; were all those questions and all your answers directed to a subsequent meeting with Mr. Rose?

A. They were the answers to the second time when he was there. [309]

Q. Entirely so? Were not any of the answers that you gave—

A. No. Because I just stood in the door there and Mr. Miller went away and brought Mr. Roth. I didn't ask no questions at that time. That was later when Mr. Rose was there.

Q. Did Mr. Roth come there at that time?

A. Yes, sir.

Q. Did he go into the private office?

A. I think so.

Q. And you were not inside; you were simply watching on the outside?

A. I was standing at the door.

Q. You don't remember anything about what occurred in the way of conversation?

(Testimony of George Berg.)

A. I don't remember.

Q. Did you hear them?

A. I heard them talking, but I didn't pay a great deal of attention to it.

Q. Why not?

The COURT.—If this was a different time you certainly do not want to make him your witness at this time.

Mr. MARQUAM.—No. I do not, but I think this is proper cross-examination. It is all a transaction connected together.

Mr. ROTH.—We object on the ground that it is not cross-examination.

(Objection sustained. Defendant excepts. Exception allowed.)

Mr. MARQUAM.—Q. How long after this time was it that Mr. Rose came down to the office when he had the conversation that you talked about?

A. I couldn't tell exactly. It couldn't have been over fifteen [310] or twenty minutes, because I went home—or I went home with Laura Herrington, took her home, and when I returned Rose was back there.

Q. While you were there in this room had Rose left and gone away? A. Yes.

Q. You saw him do that? A. Yes.

Q. And you saw him come back?

A. I didn't see him come back. He was back when I returned after taking Laura Herrington home.

Q. Now, when you got into the room there with

(Testimony of George Berg.)

Rose alone, and, as I understand it, with these deputies, yourself being one— A. Yes, sir.

Q. —what was the first thing that was said to him?

A. As near as I can remember Mr. Miller asked him to tell what took place over there, the conversation and so on.

Q. Well, what did he say?

A. He went on to make a statement.

Q. What did he say?

A. It is right there on that exhibit there, what he said.

Q. Never mind that. I want you to tell this jury what he said.

A. He made the statement. I don't remember just the words.

Q. Use his language as far as possible.

(Plaintiff objects as irrelevant, incompetent and immaterial, not proper cross-examination, and not the best evidence, because it is in writing.)

The COURT.—You may state to the jury, as nearly as you [311] recollect, what words were used, what conversation.

A. He started in to tell about the conversation and then he said he couldn't remember just what the conversation was, and he said, "Perhaps you can refresh my memory," and I did, I said, "Tell Mr. Miller in reference to what was said about that key that you were talking about," and so on along.

Mr. MARQUAM.—I want to interrupt you right there for a minute.

(Testimony of George Berg.)

Q. At the time that you made that statement in his presence, you took that opportunity to make him think that you had heard something about a key, when, as a matter of fact you had not heard anything except the word "key" mentioned. Isn't that true? A. No. That is not true.

Q. State what the facts are in that connection.

A. I will have to state then what was said. He started to make a statement, talked about the picture show, the same as he did. He said they were talking about the picture show, and he got up at that time, spoke at that time in a low tone. Then I asked him to tell me what was said about the key and he did so.

Q. What did he say?

A. He said they had talked about the key, had talked about a key, the key was mentioned he said. He didn't remember just what the conversation was, but that they had talked about a key.

Q. Didn't he say at first that he didn't remember anything about a key being mentioned until you said he was lying, or words to that effect? [312]

A. I never told him that he was lying.

Q. Didn't you tell him he was mistaken; that you heard what he had said about the key and you wanted him to tell about it?

A. No. That was on another subject.

Q. Isn't that true about the key?

A. No. It is not.

The COURT.—Go ahead and tell the jury—Mr. Marquam, I want him to go ahead and complete his

(Testimony of George Berg.)

answer to your question to go ahead and tell the jury, then, if you want to go back and fix up different parts of it, very well; but you never will get along by interrupting every statement he makes.

Mr. MARQUAM.—I am perfectly willing that Mr. Berg should do that if he will go ahead and tell this jury just what was said, and not draw his own conclusions.

The COURT.—Now, Mr. Berg, you may go ahead and tell to this jury, as far as you know, what was said when Mr. Rose was being questioned by Mr. Miller.

A. Well, he told us about the conversation that took place over there in reference to the picture show, and what he said, that he had been there either last week or a few days before, and told us about—well, in the first place, he said he didn't remember just exactly the exact words or just what was said, and he said, "If you can refresh my memory occasionally, it might come to me," and at different times I would say, "Well, tell Mr. Miller what you said in reference" to such and such a thing, "in reference to the key" and "what you were talking about, about Laura Herrington," and he answered the question.

Mr. MARQUAM.—I must interrupt you. I don't want any reference [313] to that statement. I want your testimony to this jury as to what you heard.

A. And he said from what Wooldridge said he in-

(Testimony of George Berg.)

ferred that he wanted to have sexual intercourse with her.

Q. Now, Mr. Berg, is that his own statement to start with—

A. Yes, sir. That is what he understood the substance of it.

Q. —or is that one of the times you told him he was lying? A. I never told him he was lying.

Q. At no time?

A. No, sir. I told him to tell the truth and tell exactly what was said.

Q. And you didn't use that one word with reference to that part of the statement? Did you stop him there and tell him he was not telling the truth?

A. I might have stopped him and refreshed his memory.

Q. Let me ask you this: At that particular time didn't you, in attempting to refresh his memory, use this language with reference to that affair that is contained in this statement, and made some sign of agreeing to it, and it was put down in that way?

A. No.

Q. You are sure of that? A. Yes, sir.

Q. That is his own language used in that statement, is it? A. Yes, sir.

Q. With no suggestion from you?

A. All I told him was to tell just what took place in reference to the conversation between him and Wooldridge about Laura Herrington.

Q. Miller had told him that, hadn't he? Was there any [314] necessity of you tell him that,

(Testimony of George Berg.)

if you didn't think he was not telling something that wasn't straight?

A. I knew he was not telling something that wasn't straight.

Q. That is what I want. At the time you were saying that he wasn't telling something that wasn't straight, was the conversation about that part of the statement that contains the language about wanting to have sexual intercourse with her? Was he trying to tell that straight?

A. He said that he couldn't remember the exact words but the sum and substance of it was just what is stated on there.

Q. Wasn't that your suggestion in refreshing his memory and telling him that you heard those things? Didn't that come from you, Mr. Berg?

A. No. It was not my suggestion. I simply told him to tell exactly what the conversation was between him and Wooldridge with reference to Laura Herrington.

The COURT.—That is the third time that question has been answered. Now, some other question.

A. And then—(interrupted).

Mr. MARQUAM.—Just a minute.

A. I will tell the jury just what took place if you want me to.

Q. That is what I have been trying to get you to do and not give your conclusions. If you will just repeat the language of yourself or Mr. Rose or any of these other persons when they talked, as near as you can, without stating the substance of it, then I

(Testimony of George Berg.)

will be very glad to have you tell the jury.

The COURT.—Have you anything else to tell the jury that happened down there, in response to Mr. Marquam's question?

A. Yes, sir. He would go on and make a statement, a sentence or [315] two, and he would say, "I don't remember just what happened now. If you will refresh my memory I don't know just what we were talking about at that time." I would say to him, "Now tell Mr. Miller what you said with reference to the grand jury," and would refresh his memory, and then he went on and stated what was said with reference to the grand jury.

Mr. MARQUAM.—Q. Just what did he say with reference to the grand jury on this particular occasion?

A. Well, he said that the grand jury was in session, and that he advised Mr. Wooldridge to not do what he intended to; that he was liable to be caught up at it, something like that.

Q. Is that what he said?

A. Something to that effect. Yes.

Q. Just tell us again whether that is what he said or whether that is what you understand as the effect of it.

A. As near as I can remember, that is what he said. Yes.

Q. You said awhile ago that this statement was written in sections. What did you mean by that?

A. There was a paragraph or so written, then Mr. Rose was asked if that was right and if that was his

(Testimony of George Berg.)

voluntary statement, and he would say, "Yes."

Q. What was his condition at that time as far as being nervous and worked up and excited and so on?

A. I didn't see anything unusual.

Q. Was he perfectly calm and collected?

A. He seemed to be.

Q. He wasn't apparently in fear?

A. I don't see why he should be. [316]

Q. I didn't ask you why he should be. I asked you if he was. A. I didn't notice that he was.

Q. Wasn't he very nervous?

A. I don't think so. He didn't appear to be to me.

Q. When one of these sections that you refer to was written out, was that particular part read to him carefully? A. Yes, sir.

Q. And he was asked if that was correct, if that statement was all right, and he said, "yes"?

The COURT.—That is about four times on that.

A. That is just as it occurred. That is just what he said.

Mr. MARQUAM.—Q. And he was perfectly calm and collected all during the time; not during part of the time, but during all of the time?

A. I didn't see anything unusual about him. I am not much acquainted with the man. He seemed to be perfectly normal to me.

Q. How long was he there?

A. He was there probably half or three-quarters of an hour. I couldn't say positively.

Q. Half or three-quarter of an hour?

(Testimony of George Berg.)

A. Something like that.

Q. Were you and the deputies half or three-quarters of an hour preparing this paper?

A. Undoubtedly so.

Q. Then I presume it must be taken for granted that this statement contains nowhere near the amount of conversation that occurred between the deputies and Mr. Rose?

A. Just exactly the statement he made is right there. [317]

Q. Did he make any other statements that are not here with reference to this transaction?

A. I don't think so.

Q. Do you want to tell this jury that you were three-quarters of an hour or thereabouts, getting Mr. Rose to tell this, what is on those two pages?

A. It may have been half an hour, or it may have been three-quarters.

Q. Well, then, putting it at the lowest figure, do you mean to tell this jury that there was no other conversation that went on there except what is contained in this paper, upon the part of Mr. Rose?

The COURT.—That is not the testimony.

Mr. MARQUAM.—I am asking him about it.

Q. Can you answer that question?

A. I can't fix any time, whether a half hour or what.

Q. You fixed the time from a half to three-quarters of an hour, whatever time it was, I don't care. I assume it was not less than half an hour or more than three-quarters of an hour. I want you to an-

(Testimony of George Berg.)

swer this question: If, during that period of time, whatever it was, there was any conversation had upon the part of Mr. Rose except what you contend was contained on these two pieces of paper?

A. That is practically it. Yes, sir.

Q. What is practically it? What is on this paper?

A. Yes, sir.

Q. Is that the best answer that you can give to that question?

A. Yes, sir. He was told by Mr. Miller at different times to tell just exactly what took place over there, and tell the truth; that that was all he wanted.

[318]

Q. Was your attitude towards Mr. Rose at any time threatening? A. No, sir.

Q. You spoke to him calmly and collectedly in the same manner you are speaking now in answer to my questions?

A. Yes, sir. I told him, when he couldn't remember and wanted his memory refreshed, then I would draw his attention to these little things that he had said and tell him to tell just exactly what took place, to tell Mr. Miller just what took place.

Q. Was your attitude the same, or practically the same, as it is now in testifying before this jury?

A. Just about the same.

Q. No more civil or threatening than it is now?

A. I never threatened him.

Q. I didn't mean threaten him in so many words, but I mean in the way of your attitude.

(Testimony of George Berg.)

The COURT.—That question has already been answered. Ask your next question.

Mr. MARQUAM.—You may take the witness.

Mr. ROTH.—Nothing further. [319]

Testimony of J. H. Miller, for Plaintiff.

J. H. MILLER, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. Mr. Miller, what official position do you occupy? A. Chief deputy marshal.

Q. Fourth Division, Territory of Alaska?

A. Yes.

Q. Are you acquainted with Laura Herrington?

A. I am.

Q. Acquainted with W. H. Wooldridge?

A. I am.

Q. Did you make a special investigation with reference to the second count in the indictment in this case?

A. If you will tell me what the second count is—

Q. The charge of an attempt to commit rape.

A. Yes, sir. I understand you.

Q. Did you make a special investigation in that matter? A. I did. I caused it to be made.

Q. Mr. Miller, when were you first apprised of the facts out of which this indictment grew?

A. Why, the first knowledge I had of it was in your office.

Q. Can you give about the date?

(Testimony of J. H. Miller.)

A. Well, I think it was about the 11th or 12th, something along there, of February.

Q. Of February of this year? A. Yes, sir.

Q. How—what led up to your being in my office at that time, Mr. Miller?

A. I was requested by you to—(interrupted).

[320]

(Defendant objects as irrelevant, incompetent and immaterial. Objection overruled. Defendant excepts. Exception allowed.)

A. I was requested by you to get Laura Herrington and her father George Herrington and bring them up to your office, and, complying with that request, I sent George Berg out and he got George Herrington and brought him down to our office, and I told them to go down—(interrupted).

(Defendant objects as hearsay. Overruled. Defendant excepts and is allowed an exception.)

A. I told him to go down and bring Laura Herrington up to the office, which he did.

(Motion to strike out what the witness said he told anybody else outside of the presence of the defendant. Motion denied. Defendant excepts. Exception allowed.)

A. I then took Laura Herrington and her father up into your office, and the conversation there ensued between yourself and Laura Herrington.

Q. On what subject?

(Defendant objects as irrelevant, incompetent, immaterial. The Court states that the question is, what led up to the investigation. Objection over-

(Testimony of J. H. Miller.)

ruled. Defendant excepts. Exception allowed.)

A. Conversation between yourself and Laura Herrington in regard to another case similar in its nature to this one.

(Defendant moves to strike answer as hearsay.)

Q. What case?

(Defendant—continuing objection—as incompetent and irrelevant testimony. Objection overruled. Defendant excepts and is allowed an exception.)

A. It was in regard to another case of a similar nature.

Q. What case? A. The Bobby Jones case.

(Defendant moves to strike the answer as irrelevant, incompetent and immaterial. Motion denied. Defendant excepts. Exception allowed.)

Q. No, go ahead, and state how—(interrupted).
[321]

A. Then, if I remember correctly, either yourself or myself asked the girl if—(interrupted).

(Defendant objects to witness testifying to any conversation occurring between either Mr. Roth or this witness with this girl, not in the presence of the defendant. Objection overruled. Defendant excepts. Exception allowed.)

A. In answer to some question, if anyone else had ever bothered her or committed any crime upon her, she stated—(interrupted).

(Defendant objects as incompetent, irrelevant and immaterial and pure hearsay. Objection overruled. Defendant excepts and is allowed an exception.)

A. And she stated in answer, that W. H. Wool-

(Testimony of J. H. Miller.)

dridge, or "Mr. Wooldridge" as she said, had had sexual intercourse with her about a year ago last Christmas time, or around that time, in a cabin up by her home—by his home, up near his home some place.

(Defendant moves to strike the answer as hearsay, incompetent, irrelevant and immaterial, and asks that the jury be instructed to disregard it. The Court: "Again calling your attention to the fact that the question was asked as to what led up to the investigation, motion denied." Defendant excepts and is allowed an exception.)

Q. Now, go right ahead and tell what led up to this investigation.

(The COURT Continues: "The jury are instructed that that is the only purpose for which this testimony is admitted." Defendant, by Mr. Marquam, moves the Court to strike the testimony at this time and instruct the jury that the statement of the witness Laura Herrington with regard to the commission of any other crime before the commission of the crime charged in this indictment is pure hearsay and inadmissible for any purpose, and that they be instructed to disregard it.

The COURT.—"The jury are instructed that the answer just given by the witness Miller is not to be considered by you—having been made by her in the absence of the defendant, is not to be considered by you for the purpose of proving any crime; the purpose for which the testimony is to be considered by you at all is to show what led up to the investigation

(Testimony of J. H. Miller.)

concerning which the district attorney has asked the witness.’’)

Q. Go right ahead, Mr. Miller. [322]

A. After she had made such a statement, I asked her if Wooldridge had ever bothered her—(interrupted).

(Defendant objects to any further answer upon the part of the witness along that line, as hearsay, incompetent, irrelevant and immaterial; and asks that the answer as far as it has gone be stricken, and the jury instructed to disregard it. Objection overruled. Defendant excepts and is allowed an exception.)

A. I then asked her—(interrupted).

(Mr. Marquam, for defendant, states that he would like to suggest that these questions, or this testimony, be the result of questions asked by the District Attorney, so that he may have an opportunity to object to them before they get before the jury; and the Court directs that the examination be so conducted.)

Q. What, if anything, did you ask her after she made that statement to you?

(Defendant objects as incompetent, irrelevant, immaterial, and calling for a hearsay answer. Objection overruled. Defendant excepts. Exception allowed.)

A. I asked her if Wooldridge had ever attempted a thing like that since, or had ever tried to get her to do anything like that.

Q. What did she answer?

(Testimony of J. H. Miller.)

(Defendant objects as incompetent, irrelevant, immaterial and calling for a hearsay answer. Objection overruled. Defendant excepts. Exception allowed. Mr. Marquam, for defendant moves, and asks that the record show, that all of this testimony upon this matter of the statements made by the witness Laura Herrington to the witness Miller, in the absence of the defendant, be stricken from the record. Motion denied. Defendant asks and is given an exception.)

A. In answer to that, she said to me that Wooldridge had many times.

Q. Then what did you say to her?

(Mr. Marquam asks if the record may show that after each answer given of this kind of testimony that his objection be considered.

The COURT.—“The same objection or the same motion?”

Mr. MARQUAM.—“I will ask for the same motion also.”

The COURT.—“Objection overruled; motion denied.”

Defendant excepts. Exception allowed.) [323]

A. She said he had bothered her many times since that time.

(Defendant makes the same motion to the testimony. Denied. Defendant excepts. Exception allowed.)

Q. Then what did you say to her?

(Defendant objects as incompetent, irrelevant, immaterial and hearsay. Objection overruled. De-

(Testimony of J. H. Miller.)

fendant asks and is allowed an exception.)

A. I told her then that if he ever bothered her again and tried to make a date with her for this same purpose that she had explained before, to go ahead and make a date with him and then let me know about it, either bring me the word herself or send the word by her father.

(Defendant makes the same motion to strike. Denied. Defendant excepts. Exception allowed.)

Q. And what did she say to that?

A. She said—(interrupted).

(Defendant objects as incompetent, irrelevant and immaterial and hearsay. Overruled. Defendant excepts and is allowed an exception.)

A. She said that she would do so; that if he came to her again. That is what I said to her: "If he comes to you." She said if he came to her again on any such purpose, she would make a date with him and let me know about it.

(Defendant makes the same motion to strike. Denied. Defendant excepts. Exception allowed.)

Q. Why did you make that suggestion to her?

(Defendant objects as incompetent, irrelevant and immaterial, and calling for a conclusion of the witness. Objection overruled. Defendant excepts and is allowed an exception.) [324]

A. The idea was in making her—in saying that to her that I would see the two of them together, and I would form a plan whereby there would be a conversation between them in regard to this time with which she charged with having committed this crime

(Testimony of J. H. Miller.)

upon her, and I would be able at that time, if they were alone and didn't know there was anyone else around, to determine whether or not the girl had been telling the truth.

(Defendant makes the same motion; same ruling. Exception, and exception allowed.)

Q. What was the next step leading up to this time?

A. The next that I heard of this, in connection with this matter, was when her father, George Herrington, if I remember correctly, came to me during Valentine's day, the fourteenth day of December (evidently means February) and told me—(interrupted).

(Defendant objects to any conversation on the part of George Herrington in connection with this matter, as pure hearsay. Objection overruled. Defendant excepts. Exception allowed.)

A. February, Valentine's day.

Q. What did he say?

A. And he told me that the little girl had sent him word that she had made a date at her home, or their home, at seven-thirty o'clock of that evening with Mr. Wooldridge.

(Same motion by defendant, same ruling, and exception, and exception allowed.)

Q. What, if anything, then did you do as the result of that information that you had received?

A. I then went down in the evening—I don't remember what time it was now, but it was probably five o'clock—and [325] looked that house over for the purpose of seeing if I could put men in there

(Testimony of J. H. Miller.)

and things in there to find out the truth of this charge the girl had made against the defendant.

Q. Well, what next did you do?

A. I then later on went to George Berg and asked him if he knew anyone that he could get *to down* there with him, and if so to get a man. I got another man myself.

Q. Who did you get?

A. Ed Wolcott, to go there, and instructed Mr. Wolcott, I believe, to the effect that I expected a conversation to come off in a certain building in this town. I didn't tell him where it was, or who the people were, or anything in regard to it. But I asked him to go down there where he would overhear that conversation, and asked him to take it down in shorthand, whatever it might be.

Q. What instruction was given to Mr. Clark, if you know?

A. I am not sure that I gave Mr. Clark any instructions at all. I think the instructions to Clark were given by Mr. Berg. I am not positive about that. But I think Mr. Clark was in the office before they left, if I remember correctly.

Q. Do you know whether or not Mr. Clark knew where he was going?

A. He never expressed to me that he knew where he was going. I wouldn't swear that he didn't know where he was going to, because I don't know.

The COURT.—Q. What Mr. Clark was this?

A. Mr. Frank Clark over here at the drug-store.

(Testimony of J. H. Miller.)

Mr. ROTH.—Q. Now did you go down to the Herrington home again that evening? A. Yes, sir.

Q. What occurred the next time you went down there?

A. When I went down there the next time it was about eight-thirty or a quarter to nine, somewhere between eight and nine o'clock.

Q. One moment. When you first went down there and looked the house over, did you prepare the house at that time? A. Yes, sir.

Q. All right. Then the next time you went back there, you say it was what time?

A. I think between eight-thirty and nine o'clock.

Q. Who were with you? A. George Berg.

Q. How did you happen to go down there that time?

A. About—after eight o'clock, some time after eight, Berg came up and reported to me that no one had come to the house, as we had been led to believe someone would come—(interrupted).

(Defendant moves to strike the latter part of the answer as hearsay. Motion denied. Defendant excepts and exception is allowed.)

A. (Continuing.) And so I wanted to go down there and find out from the girl why that arrangement had not been carried out, or why the thing hadn't come off as she had told me it would come. That was my purpose of going back there.

Q. What did you find when you got there?

A. I found the girl in the house and Mr. Wooldrige.

(Testimony of J. H. Miller.)

Q. What was said at that time? [327]

A. Nothing more than I simply, when I saw him and recognized him there, I said to the girl "Where is your father," and she said, "He is not home just now. He is up town somewhere," or words to that effect, and I said, "Do you know when he will be back," and she said no she didn't know, and I said, "I will call again," and stepped out. That was all that was said.

Q. Did you address Mr. Wooldridge at that time?

A. I did not. I don't think I did, unless I said, "Good evening," or something like that.

Q. How were you dressed at the time you were in there?

A. About as I am now, but I had my fur coat and hat on.

Q. Did you have the collar up?

A. I think I did. I usually wear it that way. I wouldn't say positively that I did.

Q. Did you go back there again that night?

A. I did.

Q. Did any one go with you?

A. George Berg.

Q. What time did you get back there?

A. We went out and were gone just a few minutes, until after we saw somebody leave the house—I presumed it was Mr. Wooldridge, and then we went back.

Q. Did you have a talk with Laura at that time?

A. I did.

Q. Now, with reference to this investigation and

(Testimony of J. H. Miller.)

in line with this investigation, what was your conversation between you and Laura at that time?

Mr. MARQUAM.—We object to it as calling for a hearsay answer.

The COURT.—Now the question is directed to the conversation [328] between Miller and the witness, Laura Herrington.

Mr. ROTH.—Yes. Upon the subject now of the further investigation, continuing investigation.

(Objection overruled. Defendant excepts and exception allowed.)

A. I asked her how she accounted for—(interrupted).

Q. I don't care anything about that. I will withdraw that last question. I will ask you to state whether or not that night there was anything, any further plan made with reference to a further investigation by you.

A. No. There was not.

Q. Now, what was the next step in the investigation?

A. The next morning, or the next forenoon, I think it was sometime, George Herrington came to the office and told me—(interrupted).

(Defendant objects to any statement made by the witness George Herrington not in the presence of the defendant, as pure hearsay. Objection overruled. Defendant excepts. Exception allowed.)

A. He told me that after Berg and I had left there the last time, the night previous, that Wooldridge had come back again to the house and that he had

(Testimony of J. H. Miller.)

made a date with the little girl at Rose's bicycle shop for eight o'clock the next evening.

(Defendant moves to strike all of the answer as incompetent, irrelevant and hearsay. Objection overruled. Defendant excepts. Exception allowed.)

Q. And what did you do?

A. I went up and took a look around Rose's bicycle shop to see if there was any chance to place anybody there in a shape to overhear a conversation between those people, and I found the place where I thought such a thing could be done. [329]

Q. Just state to the jury now in detail—

A. That place was—I surveyed it from the outside—McDermott's store. I went in to McDermott and told him that there was something in connection with crime—(interrupted).

(Defendant objects to any statements made to McDermott.)

Q. Just tell what you did.

A. I then went into McDermott's place, went into his bedroom, from his bedroom through a back door into a little hallway and found that I was at a side door of Rose's bedroom. From that I concluded that that would be a good place to place witnesses to overhear any conversation that might occur in that building.

Q. All right. After that what did you do?

A. After that, then I went up and I called the deputies together, some of them, and I told them what my plan was to see that meeting and overhear that conversation. I told Frank Hall to get the

(Testimony of J. H. Miller.)

keys, if he could, or the use of Judge Pratt's office for the purpose of seeing who went in that building, and for Pete McMullen to go with him; for the two of them to stay there, see who went into the building, and if this defendant and that girl went into the building at the time that had been told me they would go there—(interrupted).

Q. What time was that?

A. That was eight o'clock in the evening. After they were sure they were in there, and if they saw any lights go out, or any way, that they were in there, for the two of them to go up close by, so as to be able to see who came [330] out of the building, and who they were.

(The defendant moves to strike all of the answer, as being a conversation between this witness and the witness Frank Hall, not in the presence of the defendant, the same being pure hearsay. Objection overruled. Defendant excepts. Exception allowed.)

A. And I told—(interrupted).

(Defendant objects to the conversation about to be related by the witness, if it was not in the presence of the defendant, as being incompetent, irrelevant and hearsay. Objection overruled. Defendant excepts. Exception allowed.)

A. I then told Deputy Berg and Deputy John Wood to take up a position by that door, a place there where a person could see through, a good place to hear, and to listen to whatever conversation came off between this defendant and this girl.

(Defendant moves to strike the answer for the

(Testimony of J. H. Miller.)

same reasons before stated. Motion denied. Defendant excepts. Exception allowed.)

A. After these men were supposed to have taken their places there, I stayed outside, walked down the street here where I supposed the girl and the father—the way they would come up, and I met them and asked the little girl if she was going up there to keep that appointment, and she said she was, and I told her, “Your conversation will be overheard, and you talk to Mr. Wooldridge about this time that you claim he had sexual intercourse with you up in that cabin.”

(Defendant interposes the same motion and the same ruling is made and exception allowed.)

A. And she said she would. And I also told her that if anything came off—(interrupted).

(Defendant moves that any further conversation or instructions not in the presence of defendant be—We object to it as incompetent, irrelevant [331] immaterial and hearsay. Objection overruled. Defendant excepts. Exception allowed.)

A. I then told her that if anything started there that was not right, or if he attempted to treat her wrong in any way, for her to simply say, “Now, you be careful,” or “Be careful.” I couldn’t say those were the exact words, but words to that effect, and then there would be some transaction occur that would cause a stop. But to hold the conversation with him.

Q. Now, up to this time, Mr. Miller, did any person besides yourself have any part in the making

(Testimony of J. H. Miller.)

of these arrangements?

Mr. MARQUAM.—Up to what time?

Mr. ROTH.—Up to the time he talked to Laura on the way up there.

A. No one, any more than the deputies I consulted with, and I think I consulted with you as to whether it was the proper thing to do, and what was the right thing to do in the case.

Q. Whose plan was this?

A. This plan was my own.

Q. Now, just carry that on. What was the next thing that occurred.

A. The next thing that occurred was, several minutes after that, when I went up there—I think really the next thing that I saw in connection with the matter was when Mr. Wooldridge, Mr. Rose and the little girl were out in front of the bath-house there, Mrs. Wilson's bath-house, and I told them all to come up to the office.

Q. Did you go into Rose's bicycle shop that night?

A. No, sir. I did not.

Q. Now, when you came into the marshal's office, what part of the office did you go into? [332]

A. Went into the private office of the marshal.

Q. Who were there? Who all were there?

A. When we first went in there I think there was just Mr. Wooldridge, Mr. Rose, and the little girl and myself.

Q. Did you have any conversation at that time?

A. We did.

Q. All right. Just state what was said at that time.

(Testimony of J. H. Miller.)

A. As near as I remember it, I asked Mr. Wooldridge what was the reason that he was meeting this little girl at night this way, and he answered me and said that she had come in and said that she wanted to hide, and the little girl said to him, "You are lying about that. I didn't say that. I didn't say I wanted to hide at all." I said to the little girl, "What was your purpose of going there to meet Mr. Wooldridge?" "Well," she said, it was to keep a date I had made with him." I said, "What was the purpose of the date?" She said, "The purpose of the date was that I promised to give him a piece." That was the words she used.

Q. What did Mr. Wooldridge say?

A. He didn't say anything, I don't believe. I don't know whether he answered or not. He might have.

Q. When Laura said that he lied about stating that she said that she went in there to hide, did Mr. Rose say anything?

A. I don't think Mr. Rose did at that time. That was about all of the conversation I had there alone with them both at the time, and I then called the other boys in.

Q. You then called who in?

A. I called the other boys in.

Q. Did I go in there at any time? [333]

A. No, sir.

Q. Did you call me that evening? A. I did.

Q. What did I tell you?

A. You told me you didn't want to have anything

(Testimony of J. H. Miller.)

to say about that at all.

Q. And I didn't go in? A. You didn't go in.

Q. Now, what else was said after the other boys went in there?

A. Well, I asked Mr. Wooldridge, I said to him, "What was you doing down at this girl's house yesterday?" He said, "I was down there trying to sell some potatoes," an answer of that kind. I don't remember his exact words. Then I said, "What were you doing down there again last night?" He said, "I wasn't down there last night." I said, "Yes, you were. You were there last night, because I am one of the two men and this is the other man standing here that walked in there when you were sitting there talking to the girl." He said, "I didn't recognize you." Then I said—(interrupted).

Q. What did he say in reference to that; what he was doing there?

A. He said something again about the potatoes, and so I said to him, I said, "After we left you got up and went out." He said, "Yes." Then I said, "We went back there again after that." and I said, "Did you go back there again after we left the second time?" He said, "No, I didn't" And I said to him, "Is everything you have said here to-night as truthful as this statement that you are making right now, [334] that you didn't go back there again after Berg and I left the second time?" He said, "Well, I did go back there, but I didn't go inside."

Q. Did you ask him what he went back for that time?

(Testimony of J. H. Miller.)

A. I don't think I did that time. I don't think I asked him.

Q. Did he say what he went back there for?

A. No. He didn't say what he went back for. I told him that was all I had to say; to go away.

Q. Did he volunteer any statement there at all at that time?

A. Not that I recollect at that time, no. No nothing further than that.

Q. Now after that, or during this time, did Mr. Rose say anything in this conversation?

A. Not that I remember of. I don't think Mr. Rose—I don't think at that time that he said anything right at that time, no. I am not sure.

Q. Did you later have a conversation with Mr. Rose? A. I did.

Q. When was that?

A. That was a few minutes after this conversation. Berg and I started to take the girl home, and when we got down here a little ways, it either come up by conversation, or we got to thinking it over, and we concluded if we wanted to get the whole truth of the case we had better question Mr. Rose before he and Mr. Wooldridge had talked together.

(Defendant objects to that and asks that it be stricken as being a conclusion of the witness and the Court strikes the latter part of the answer and directs the jury to disregard it.)

Q. What did you do?

A. I went back to the office, and I sent Pete McMullen down [335] after Mr. Rose, and he

(Testimony of J. H. Miller.)

brought him up to the office.

Q. Tell the jury just what occurred with Mr. Rose when you got into the office there.

A. After we got in the office, I asked—I started to ask Mr. Rose some questions—(interrupted).

Mr. MARQUAM.—Q. Was Mr. Wooldridge there? A. No. He was not.

(Defendant objects to this as hearsay, not being in the presence of the defendant and therefore not binding on him and as incompetent, irrelevant and immaterial. Objection overruled. Defendant excepts. Exception allowed.)

A. I took a pad of paper and asked Mr. Rose some questions. He volunteered some questions. I had the other boys come in where we were.

Q. Do you mean “Volunteered some questions,” or “statements”?

A. Statements. He volunteered some and I asked him some in connection with it, and Mr. Berg spoke to him about some parts of his statement as to certain conversations that had taken place, and I wrote that all down. As I wrote it, each sentence at a time, a few words at a time, I read them back to him, repeated it, and asked him if that was what he wanted to say, and he said it was. And when I got the whole thing written down, I asked him if he had any objection to swearing to it that it was true, and he said it was true and he would swear to it. And I handed him the paper, and I said, “You had better read it.” He said he didn’t have his glasses with him. So I took the paper and handed it to Deputy Frank Hall

(Testimony of J. H. Miller.)

and told him to read it to Rose, and he read the paper to Rose, and Rose signed it and swore to it. And the boys in the office—(interrupted). [336]

Q. After Frank Hall had read it all over to him, what did Rose say about it?

A. He said that was substantially what he wanted to say; that that was the truth. I cautioned him again and again; “don’t tell anything but what is so, but what is true. That is all I want to put down here. That is all I want to know,” and he said, “That is just the truth of it.”

Q. Were there any threats of any kind made to him there? A. None whatever.

Mr. MARQUAM.—I move that the last two answers—I think there was a question in between. The main part of the testimony I want to move to strike, was the answer and question previous to this. I move to strike as incompetent, irrelevant, immaterial, hearsay, a conversation taking place upon the part of their own witness Rose, which he has testified to but which the defendant has not testified to, making it purely and simply hearsay.

(Motion denied. Defendant excepts. Exception allowed.)

Mr. ROTH.—Q. Mr. Miller, I now show you Plaintiff’s Exhibit No. 1 and ask you to state whether or not—ask you to state whose handwriting that is in.

A. That I believe to be in my own handwriting.

Q. Is that the statement you have been referring to now in your testimony? A. Yes, sir.

Q. As having been given by Mr. Rose?

(Testimony of J. H. Miller.)

A. Yes, sir. That is the same thing. [337]

Q. Now in that conversation I will ask you to state whether or not Mr. Rose said anything upon the subject of whether or not Laura Herrington said that anybody was following her or that she came in to hide.

(Defendant objects as incompetent, irrelevant and immaterial, and calling for hearsay evidence. Objection overruled. Defendant excepts and exception allowed.)

A. He said—I asked him what the little girl said, if she said that someone was after her, if she wanted to hide in there. He said, “I didn’t hear her say anything like that.” He said, “She and Wooldridge were talking over by the stove, and I didn’t hear what they said.” That is what he told me.

Mr. ROTH.—You may cross-examine the witness.

Cross-examination.

Mr. MARQUAM.—Just a question or two before we adjourn.

The COURT—Unless you are going to complete your cross-examination—(interrupted).

Mr. MARQUAM.—It won’t be possible to complete it to-night.

The COURT.—I do not think that it would be advisable to *to* start in with it.

Mr. MARQUAM.—Very well.

(Trial continued until ten o’clock to-morrow morning, and the jury, after being admonished as usual, withdraw in charge of the bailiffs.)

March 11, 1916, 10 o’clock A. M. The defendant

(Testimony of J. H. Miller.)

and his attorneys and the District Attorney and the jury are present in court and trial resumed. [338]

J. H. MILLER, resumes his testimony.

Cross-examination.

By Mr. MARQUAM.—Q. You are chief deputy United States marshal? A. Yes, sir.

Q. How long have you held that position?

A. Since the first of last May.

Q. What has been your previous experience as an officer, Mr. Miller?

A. None whatever, sir. That is before that I was office deputy since July first, 1915.

Q. How long have you been in the marshal's office?

A. Since July 1, 1913.

Q. And as I understand you, prior to that time you had had no experience in an official capacity?

A. No, sir.

Q. What has been your business generally since you have been in Alaska?

A. I have been in the mercantile business, dairy business and butcher business.

Q. Have you any interest or feeling in this matter so far as the defendant is concerned?

A. I think not, Mr. Marquam, further than my official duty.

Q. Let me ask you if it is true that during the last year you went to Mr. Riggs who is one of the railroad commissioners and made any effort to have Mr. Wooldridge removed from the employ of the Government.

(Plaintiff objects, as irrelevant, incompetent and immaterial, and not cross-examination. Mr. Mar-

(Testimony of J. H. Miller.)

quam states it is to show interest, feeling, and the attitude of the witness toward the defendant. Objection overruled.) [339]

Q. Is that true?

A. I don't think that I ever went to Mr. Riggs and made any effort to have Mr. Wooldridge removed, or kept from being hired, or anything of that kind.

Q. You say you don't think you did?

A. I am sure I didn't.

Q. You would remember it if you did?

A. Yes, sir.

Q. Then you will say positively now that you never did?

A. I will say positively. I had better answer your question, I think, as you put it. I think you are mistaken, and I have no desire to say anything except that you have got things a little twisted.

Q. I don't know. I want to find out.

A. You have some information, but your information is wrong. I want to be perfectly fair. I think you said it was to Mr. Riggs I went in regard to Mr. Wooldridge. It was to Mr. Rigg's assistant that I went in regard to Mr. Wooldridge.

Q. What was the purpose of that, to have him removed from the position?

A. Yes, and I think I ought to have the right to further answer that question.

Q. When was that?

A. I don't remember, but I think it was last spring.

Q. Do you have any personal knowledge of your employer, Mr. Erwin, having made the same effort?

(Testimony of J. H. Miller.)

A. That was upon the request of my employer, Mr. Erwin.

Q. Erwin requested you to do that? A. Yes.

Q. When did you start into the investigation of this case. [340] against Mr. Wooldridge?

A. About the time that I told you. I think the first investigation was on the night of the fourteenth of February.

Q. Fourteenth of February, 1916.

A. 1916, yes.

Q. At whose suggestion did you start this investigation, if anybody's?

A. It was not suggested to me by anybody. I practically started it myself. That had come up out of the conversation I had with Laura Herrington. That is how it came into my mind.

Q. Did you at that time, or prior to that time, consult with Mr. Roth?

A. No, sir, not in connection with this case.

Q. You say you did not?

A. No. Not in connection with this case. The whole thing developed right there in Mr. Roth's office when the little girl was there.

Q. Then that did start in Roth's office?

A. Yes. Nothing previous to that had ever been said.

Q. I presume you talked with George Herrington, consulted with him considerable?

A. I didn't consult with George Herrington.

Q. Did he consult with you?

A. No, sir. He followed the instructions that I

(Testimony of J. H. Miller.)

gave him; that if the little girl told him anything, to tell me, to come and tell it to me.

Q. Was this investigation which, and this plan of action which [341] you yourself and the other deputies entered into at the Herrington house and up at Rose's shop—what was the initial purpose of that?

A. The initial purpose of that, Mr. Marquam, was to prove whether or not, by the conversation that ensued between Wooldridge and the girl, if that crime that she alleged against him had actually happened up in that cabin.

Q. It was for the purpose of securing evidence to help in his conviction of that offense that had been committed some years or more before?

A. It was for the purpose of proving whether that statement of her's was the truth or not.

Q. Isn't it a fact, Mr. Miller, that it was for the purpose of gaining some more evidence that would aid in his conviction.

A. I can give you an exact illustration if you want to as to just what purpose was, so there can be no doubt about it.

Q. Answer my question.

A. I can't answer that question in that way fairly to both sides. It is whatever developed. If it developed something that would aid the prosecution, well and good; if it developed something that would aid the defendant, well and good. It made no difference to me.

Q. You as an officer investigating that matter were not satisfied. I take it, that you had sufficient evi-

(Testimony of J. H. Miller.)

dence to justify a prosecution against Mr. Wooldridge up to that time.

A. Not on the girl's lone statement.

Q. Or on anybody else's statement at that time?

A. I hadn't investigated anybody else at that time.

[342]

Q. With regard to the offense in question here wherein he is charged with rape? A. Yes, sir.

Q. You had made somewhat of an investigation, had you not, as to whether there was any other evidence in existence at that time that would tend to corroborate her bare statement?

A. The girl had made—(interrupted).

Q. Answer that.

A. No. Not that I remember of, that I had investigated at that time.

Q. And it was for the purpose of determining the need of other testimony or other evidence, that you started this plan of action?

A. It was this: To get evidence in the case, real evidence as to the truth or falsity of her charge.

Q. Yes? A. Yes, sir.

Q. And was George Herrington in consultation during this time with Mr. Roth or yourself?

A. He never was in consultation with me, not consultation. No, sir.

Q. When I say consultation, I mean talking together.

A. Yes. He came to me and reported these things to me as I have stated.

Q. In this particular investigation was he to re-

(Testimony of J. H. Miller.)

port to you? Was there an understanding between you and Mr. Roth that Herrington was to report to you, or was he reporting to Mr. Roth, and then he, Mr. Roth, consulting with you as to the plan of action?

A. No, sir. Mr. Roth didn't consult with me as to the plan of [343] action in securing this evidence. That was my own plan.

Q. As to the details of it?

A. As to what was the proper thing for me to do to keep within the law and do the right thing as far as the law was concerned, I consulted with Mr. Roth, as to how far I should go in a thing of this kind in investigating.

Q. In that respect you followed Mr. Roth's advise? A. Yes, sir.

Q. But you mean to say that as to the details in working out this scheme, those were your own?

A. Those were my own. That was my way of trying to determine the truth of the matter.

Q. What I was getting at was this: With regard to Mr. Herrington himself, undoubtedly you relied upon Mr. Herrington for help in this matter.

A. Not any more than to bring me—I will explain the matter, why I used Herrington, if you want me to.

Q. I want you to answer the question. I want to be fair with you. A. I will be fair with you.

Q. But I want you to answer the question. You or somebody did have occasion to talk or consult with Herrington? A. Not consult.

(Testimony of J. H. Miller.)

Q. What do you mean. Talk with him?

A. If I understand "consult" it means that if you and I were to consult together on a plan of action, if I understand the word "consult."

Q. I mean talk with him.

A. Yes. I talked with him, if that is what you mean. I told [344] him or gave him instructions what to do.

Q. Did you attend to all that or did Mr. Roth attend to any part of it?

A. He never attended to anything that I remember. If he did it was something that didn't come within my knowledge.

Q. When did George Herrington first tell you about having had a talk with Wooldridge with regard to some potatoes that Wooldridge was to deliver or sell?

A. I think it was before the fourteenth. If I remember I think it was the eleventh or the twelfth that he said Wooldridge said something to him about potatoes.

Q. Wasn't it before that?

A. I don't think it was. I won't be positive as to a day or two there, for I am not sure.

Q. Now, the fourteenth, you fix as the day which—what do you identify the fourteenth by, by what fact that appears in this case?

A. Valentine's Day.

Q. With regard to this case?

A. The meeting at the house, at the Herrington house.

(Testimony of J. H. Miller.)

Q. In the evening? A. Yes, sir.

Q. The time that these people were upstairs?

A. Yes, sir.

Q. You identify that as the fourteenth?

A. Yes, sir.

Q. Now, as a matter of fact, didn't you, didn't your office and your deputies have in mind the laying of this scheme down [345] there—call it whatever you want—(interrupted).

A. Any name you like.

Q. —sometime before that between—somewhere between five and ten days before? A. No, sir.

Q. Did you ever have a talk with Mr. Berg in which this matter was outlined or at least *subjected* so that he knew that there was a proposition on to get evidence against Wooldridge somewhere between five and ten days before that meeting occurred down there? A. No, sir.

Q. If Mr. Berg made that statement, he is mistaken, is he? A. He certainly is.

Q. How did Herrington come to give you this information about Wooldridge coming to the house or intending to come to the house on this potato proposition? Did he come to you and tell you about that? A. Yes.

Q. And that is the first information you had of it?

A. That is the first information I had of it.

Q. What did you say to George Herrington, Mr. Miller, when that occurred?

A. I don't know as to what I might have said to him. I probably said that if—(interrupted).

(Testimony of J. H. Miller.)

Q. Just a minute. If you don't remember, don't guess at it.

A. I don't remember just what I said.

Q. Didn't you tell him, in substance at least to get his daughter Laura to make a date with Wooldridge? A. No, sir.

Q. You didn't? [346]

A. That is a thing that I have always avoided.

Q. Well, did he suggest it? A. No, sir.

Q. He didn't?

A. No, sir. Not the way you put it.

Q. Not the way I put it. Wasn't that your intention, and wasn't that George Herrington's intention, and wasn't that Mr. Roth's intention, as you understood it, that if you could get Laura Herrington alone, when Wooldridge came there, to encourage her to do it? A. No, sir.

Q. That is not it?

A. Not in that way. You put it wrong. I can answer that question.

Q. Well, that is an answer. You say that you did not do that? A. No.

Q. When and through whom did you first receive any information that a plan had been laid or consummated whereby these two people were to be found alone there or would be alone?

A. Through George Herrington.

Q. He told you about it? A. Yes, sir.

Q. And you then immediately laid your wires for the purpose of catching him?

A. Not immediately. No. I went down that

(Testimony of J. H. Miller.)

evening at five o'clock or such a matter.

Q. In plenty of time? [347]

A. In plenty of time. Yes.

Q. What did you do?

A. You want to know exactly what was done, don't you?

Q. Yes. The other witnesses have attempted to describe it, but you are the one that know more about it, and I would like to have your statement.

A. It will become necessary for me to tell you something that I would rather wouldn't become public property.

Q. The reason I ask you this is because this had all been developed before this jury.

A. In our office we have a dictaphone, which is used for the purpose of getting conversation between people, and that conversation can be transmitted at least—I don't know how far, but we have a wire fifty feet long, and we can hear that far any conversation transmitted by that instrument. I went to that house and in the main front-room I put the little instrument that takes the noises, the sounds. I run the wire and secreted that so it couldn't be seen—secreted that so it couldn't be seen and run the wire back to where the receiver is, putting the receiver on a table. And that was all the work that we did there in the house at that time.

Q. That was installed in the evening about seven or seven-thirty?

A. No. That was installed about five o'clock in the evening, somewhere near there.

(Testimony of J. H. Miller.)

Q. Who was there and saw it installed?

A. Mr. Berg was there, and Laura, and her father, I think.

Q. George Herrington? [348] A. Yes.

Q. And Mrs. Herrington?

A. I think Mrs. Herrington was there.

Q. They all saw and knew what it was?

A. I don't know. I didn't explain to Mrs. Herrington. Mrs. Herrington was full of whisky at the time. That is the truth of the matter.

Q. Full of whisky?

A. She had plenty aboard. Yes, sir.

Q. Is that the only time you ever saw Mrs. Herrington full of whisky?

(Plaintiff objects as irrelevant, incompetent and immaterial. Objection sustained. Defendant excepts. Exception allowed.)

Q. Isn't it a fact that you have—I want to put this question direct, inasmuch as the witness has answered that question, for the purpose of the record. Isn't it a fact that you have personal knowledge, or know at least, that Mrs. Herrington is drunk, or at least gets whisky and drinks it whenever she can get hold of it?

(Plaintiff objects for the same reasons last stated. Objection sustained. Defendant excepts. Exception allowed.)

Q. What instructions did you give Mr. Herrington and Mrs. Herrington and the girl?

A. I gave them no instructions any more than that before the time that this meeting was to take

(Testimony of J. H. Miller.)

place they should be away from there.

Q. All of them except Laura?

A. All of them except Laura. Yes.

Q. You must have explained to Mr. Herrington at least, whether [349] you did to Mrs. Herrington or not, why you wanted them away.

A. Yes, sir.

Q. And he agreed to see that those conditions were observed? A. Yes, sir.

Q. Were you down there when these people that went upstairs came there? A. No, sir.

Q. Did you direct these people to go there?

A. I asked Mr. Wolcott to go there and report whatever he could hear over that dictaphone.

Q. Who had Mr. Clark go there?

A. Mr. Berg.

Q. By your permission or direction?

A. I asked Mr. Berg if he knew someone who was a thoroughly reliable good citizen that he could take there with him whose word wouldn't be doubted.

Q. You didn't talk with Mr. Clark?

A. No. I think Mr. Clark came in the office, Mr. Clark and Mr. Wolcott, just before they started.

Q. You knew that he was going to be there?

A. Yes, sir.

Q. What were your instructions to Laura Herrington, if any?

A. My instruction to Laura Herrington was to talk with Mr. Wooldridge regarding the time that she claimed he had sexual intercourse with her in that cabin up by his home, to talk with him gen-

(Testimony of J. H. Miller.)

erally about it, and I explained to the little girl that that was for the purpose of proving whether it ever happened or didn't happen. I said "When [350] you talk to Mr. Wooldridge, you talk to him about that time, and his answers to you will be proof as to whether you are telling the truth or telling a lie about it."

Q. You told her especially to talk about—assuming the truth of that matter, to talk about sometime she had claimed to have had sexual intercourse with the defendant. That is, the evidence of this first charge in the indictment?

A. Yes, sir.

Q. That is what you referred to? A. Yes.

Q. You told her to talk loud?

A. I told her to speak in a good ordinary tone.

Q. Did you explain to her that this dictaphone was there? A. Yes.

Q. And she must talk reasonably loud so it would be recorded?

A. I don't think so. The dictaphone is just about as sensitive as the ear, or even a little more so.

Q. All right.

A. Yes. I think a trifle more so.

Q. Take that dictaphone and put it in a desk, in a drawer, and you could hear an ordinary conversation?

A. Yes. I could hang it up in that room out there (indicating) and I think it would record everything you and I are saying now.

Q. By record, you don't intend to give the jury

(Testimony of J. H. Miller.)

the idea that it records on a record?

A. No. It transmits, takes the sound and transmits it.

Q. So that the person at the other end, who has this cap over [351] his ears can hear it the same as a telephone?

A. Just the same as if they were sitting in the room.

Q. It is only a telephone that is much more powerful than the ordinary telephone?

A. As I understand it, I believe that is what it is.

Q. Laura Herrington knew that these men were upstairs and knew the purpose for which they were there? A. Yes, sir.

Q. Well, you were informed later on that this plan had failed, were you not?

A. Well, I was informed—(interrupted).

Q. Nobody came?

A. I was informed that nobody came at that time.

Q. So you went up there? A. Yes.

Q. You and Berg? A. Yes.

Q. What did you say when these men came down to your office and reported that they had stayed there three-quarters of an hour, or an hour, and nobody came?

A. There was nobody came to the office except Mr. Berg, I believe.

Q. What did you say to Mr. Berg?

A. I asked him "What is the matter down there," and he said, "Well, Wooldridge didn't come."

(Testimony of J. H. Miller.)

Q. Let me ask you if you said this to Berg: "We will just go up there and see, and see if that girl is lying to us."

A. I did, I think. Yes. That is one of the first things that flashed through my mind.

Q. So you went up there and knocked on the door, expecting [352] to have a talk with her, and you saw Wooldridge in there then, sitting there?

A. Yes.

Q. Was he sitting down?

A. As I opened the door, he was sitting like this (indicating) to my left in a chair.

Q. How was he dressed?

A. I don't recollect, but I—(interrupted).

Q. Did he have his fur coat on?

A. I think he had an overcoat on. I wouldn't say it was a fur coat.

Q. Did he have his hat in his hand?

A. I don't know. I just saw him at a glance like that, and it occurred to me that he had come there, and I didn't care to have him recognize me at that time.

Q. So you handled yourself by the way you faced, kept your face away from him, so as to prevent him from recognizing you?

A. I spoke to him, I think, said to him "Good evening."

Q. Didn't you disguise your voice?

A. No. I didn't disguise my voice. I said to the little girl "Is your father in"? or words to that effect.

(Testimony of J. H. Miller.)

Q. You just said you didn't want him to know it was you.

A. No, I didn't want him to know it was me.

Q. So you must have done whatever occurred to you at that time to prevent him from recognizing you?

A. Yes. Although I had known Wooldridge for a long time and he worked for me once.

Q. There was light on in there. [353]

A. Yes.

Q. How was that house lighted?

A. There were lamps in there.

Q. Electric light? A. No. Lamps, I think.

Q. Tell the jury whether, under the circumstances as surrounding yourself, with your coat collar turned up, as I understood from Berg, it was a difficult thing for a man to recognize you.

A. I think it was, on account of the way I stood when speaking to the little girl. She was in front of me here, and Wooldridge was here (indicating). So I naturally wouldn't be in view, and if my coat collar was turned up he probably wouldn't see my face.

Q. Did you have a talk with George Herrington that night?

A. Not that night. I had talked with him during the evening when I was installing the dictaphone.

Q. I mean after that. A. No, sir.

Q. When did you see him again?

A. The next day some time.

Q. What time? A. I don't remember.

(Testimony of J. H. Miller.)

Q. When did you see Laura Herrington again?

A. I didn't see her again until we came back to the house. We left after I had that conversation with her when Wooldridge was there. We left and went away, and I saw him leave shortly after we left, then I turned around and came back and had a talk with her. [354]

Q. How long did you stay there?

A. I stayed about ten minutes.

Q. You saw Wooldridge leave or Herrington leave?

A. Wooldridge, after we had the conversation.

The COURT.—The questions were directed to Mr. Herrington.

Mr. MARQUAM.—I was directing my questions, Mr. Miller, particularly to when you saw the girl.

A. Yes. It was when I went back shortly after Mr. Wooldridge left.

Q. And you didn't see Mr. Herrington then?

A. No, sir.

Q. What time was it when you went back there?

A. The last time?

Q. Yes. The last time?

A. I don't know. I think it was about half-past eight when we left the office, or a little later than that, and we went down there and went in and this conversation ensued; then, after we went out, we went down the street a block, and it was not but a short time until Wooldridge came out and we went back in.